No. 00-1167

(20)

In The

Supreme Court of the United States

TAHOE SIERRA PRESERVATION COUNCIL, INC., a California non-profit corporation and membership organization, *et al.*,

Petitioners,

v.

TAHOE REGIONAL PLANNING AGENCY, a separate legal entity created pursuant to Bi-State Compact, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

MICHAEL M. BERGER*
GIDEON KANNER
BERGER & NORTON
A LAW CORPORATION
1620 26th Street
Suite 200 South
Santa Monica, CA
90404-4040
(310) 449-1000

LAWRENCE L. HOFFMAN
HOFFMAN LAW OFFICES
3000 No. Lake Boulevard
Post Office Box 7740
Tahoe City, CA 96145
(530) 583-8542

Counsel for Petitioners

**Counsel of Record*

E. CLEMENT SHUTE, JR.*
FRAN M. LAYTON
ELLISON FOLK
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, CA 94102
(415) 552-7272

Counsel for Respondents

(Additional Counsel for Respondents listed on inside cover)

Petition For Certiorari Filed January 18, 2001
Certiorari Granted June 29, 2001

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

196 pp

JOHN L. MARSHALL
TAHOE REGIONAL
PLANNING AGENCY
P.O. Box 1038
Zephyr Cove, NV 89448
(775) 588-4547

BILL LOCKYER
Attorney General of the
State of California
RICHARD M. FRANK
Chief Assistant
Attorney General
MATTHEW RODRIGUEZ
Senior Assistant
Attorney General
DANIEL L. SIEGEL
Supervising Deputy
Attorney General
MARY J. SCOONOVER
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 445-9555

FRANKIE SUE DEL PAPA
Attorney General
of the State of Nevada
WILLIAM J. FREY
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701
(775) 687-6532

TABLE OF CONTENTS

Page

Relevant docket entries in the United States District Court for the Eastern District of California 1

Relevant docket entries in the United States District Court for the District of Nevada 1

Relevant docket entries in the United States Court of Appeals for the Ninth Circuit 3

First Amended California-Side Complaint for Inverse Condemnation, Denial of Constitutional and Civil Rights, and Just Compensation and Damages 4

Order from the United States District Court, D. Nevada, dated January 28, 1998 ..... Pet. App. 128

Pretrial Order for Liability Phase of Lawsuit, filed August 6, 1998 74

Stipulation and Order Not to Introduce Evidence Regarding Individual Plaintiffs 79

Trial exhibit number 1. Tahoe Regional Planning Compact 83

Trial exhibit number 7. Tahoe Regional Planning Agency Resolution No. 81-5 126

Excerpts from Ordinance No. 81-5 ..... Pet. App. 168

Ordinance 81-5 159

Resolution (No. 83-21) Suspending Issuance of Project Approvals ..... Pet. App. 170

Excerpts from 1984 Regional Plan for the Lake Tahoe Basin ..... Pet. App. 172

Trial exhibit number 78. Comparable Nevada Low Capability Land Sales Chart – Table A 131

TABLE OF CONTENTS – Continued

Page

Trial exhibit number 78a. Comparable Nevada Low Capability Land Sales Chart – Table B 132

Trial exhibit number 81. Comparable Greenbelt Land Sales Chart Nevada Tahoe Basin Act – Table No. F 133

Trial exhibit number 82. Comparable SEZ Lot Sales Chart – Table G 134

Trial exhibit number 244. Attachment C, Tahoe Regional Planning Agency Resolution No. 82-11 – Resolution of the Governing Body of the Tahoe Regional Planning Agency Adopting Environmental Threshold Carrying Capacities for the Lake Tahoe Region..... 135

Findings of Fact, Conclusions of Law, and Order from the United States District Court, D. Nevada, dated January 15, 1999 ..... Pet. App. 57

Opinion from the United States Court of Appeals for the Ninth Circuit, filed June 15, 2000 .....Pet. App. 1

Order of United States Court of Appeals, Ninth Circuit, filed October 20, 2000 denying rehearing and rehearing en banc and dissent therefrom ..... Pet. App. 156

Order from the Supreme Court of the United States, Washington, D.C., dated, June 29, 2001 ... 192

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Tahoe-Sierra Preservation Council, Inc., et al. v. Tahoe Regional Planning Agency, Case No. CV-S-84-816EJG

6/25/84	Complaint; summons issued
1/7/85	Defendants' motion to dismiss granted in part, denied in part, submitted in part
3/27/87	Order granting defendants' motion for summary judgment
3/30/87	Judgment entered
12/9/91	USCA Order that judgment is affirmed in part, reversed in part and remanded; case reopened
1/21/92	Order granted changing venue to District of Nevada

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Tahoe-Sierra Preservation Council, Inc., et al. v. Tahoe Regional Planning Agency, Case No. CV-R-84-257ECR

6/25/84	Complaint; summons issued
5/10/85	Order: Nevada's motions to dismiss 2nd, 5th, 6th & 7th claims for relief granted; California's motions to dismiss 2nd, 5th and 6th claims for relief granted & TRPA's motion to dismiss 7th claim for relief of money damages granted

6/3/86 Defendants' motions for summary judgment granted

11/19/90 Judgment from 9CA affirming in part, reversing in part & remanding

10/28/91 filed first amended complaint

2/21/92 Order: court concurs in decision of East Dist of Calif to grant parties' petn for change of venue & transfer to this court. Cases consolidated for all further proceedings

12/9/92 Order: Defendants' motion to dismiss granted.

12/9/92 Judgment entered dismissing first amended complaint.

11/15/94 Order from Court of Appeals affirming in part, reversing in part and remanding

7/7/95 Answer filed to California side complaint

7/7/95 Answer filed to Nevada side complaint

10/10/95 Order granted bifurcating trial; liability to be tried to court; if Ds are determined to be liability, trial on issue of damages then be to a jury

1/15/99 Findings of Fact, Conclusions of Law

3/5/99 Order granting motion to certify matter for immediate appeal

---

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Tahoe-Sierra Preservation Council, Inc. et al. v. Tahoe Regional Planning Agency

Docket No. 86-2266

8/9/90 Filed opinion: affirmed in part, reversed in part, remanded

8/27/90 Filed amendment to opinion

Docket No. 87-2096

7/8/91 Filed opinion: affirmed in part, reversed in part, remanded

Docket Nos. 93-15113, 93-15114

8/10/94 Filed opinion: affirmed in part, reversed in part, remanded

Docket Nos. 99-15641, 99-15771

6/15/00 Filed opinion: affirmed in part, reversed in part, remanded for entry of judgment in favor of defendants

10/20/00 Order denying rehearing and denying rehearing en banc

10/20/00 Filed opinion dissenting from denial of rehearing en banc

---

Lawrence L. Hoffman
Gregg R. Lien
Philip A. Olsen
HOFFMAN, LIEN, FACCINTO
GARNETT & LIEBERMAN
Post Office Box 7740
Tahoe City, California 96145
(916) 583-8542
(702) 831-8542

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

The TAHOE-SIERRA PRESERVATION COUNCIL INC., a California non-profit corporation and membership organization; BRUCE A. AMES and JUDITH M. AMES; LAURA L. ANDERSON and JAMES E. ANDERSON; ALFRED J. ANTONINI; CAROLYN J. APPLEBY; EDWARD ARRI and BARBARA ARRI; GEORGE P. ASCHE and PRISCILLA J. ASCHE; LEONARD W. ASCHER and ADELINE H. ASCHER; ALPINE INVESTMENT; NICK BADAMI; WES BALLARD; M.A. BEHR and ESTHER M. BEHR,	CIV. NO: CVN 92-98-ECR (Base File) (FILED MAR 17 1992) FIRST AMENDED CALIFORNIA-SIDE COMPLAINT FOR INVERSE CONDEMNATION, DENIAL OF CONSTITUTOINAL AND CIVIL RIGHTS, AND JUST COMPENSATION AND DAMAGES (California-Side) PLAINTIFFS DEMAND A JURY TRIAL

CLARENCE C. BENEDICT; MAX V. BENTLEY and MINNIE R. BENTLEY; LEROY G. BLACK; RICHARD A. BLASCO and AIDA M. BLASCO; ARLETTE I. BROWN; ARTHUR C. BYSTROM; ALLAN F. CASE and TERUKO CASE; DON N. CHOATE and LORRAINE E. CHOATE; EDWARD W. CISLO, JR. and LA VERNE C. CISLO; JAMES D. CLEMENT; ROBERT D. COLCLAZIER; JAMES R. COMPTON; CARL D. COOK; DOROTHY MAE COOK; HAROLD F. CORNELIUS; JOAN COSTA; DONALD COTTEN; OLGA R. CROSETTI; ALAN W. DAGG; GWENDOLYN IONE DAY; EDDY K. DAYNE and ANNE M. DAYNE; RICHARD DEFENBAUGH and TERESA DEFENBAUGH; JOHN J. DESTEFANO; JESS R. DETEVIS and DIANE DETEVIS; ROBERT E. DIXON and JUDITH E. DIXON;

STEVEN N. DOLIN and)
MARY T. DOLIN;)
MARILYN T. DURBIN;)
KENNETH W. EBERLE)
and BETTY L. EBERLY;)
WILLIAM A. EDWARDS,)
JR. and FRANCES M.)
EDWARDS; ANDRE)
YANN EGASSE;)
RONALD F. ELIOFF and)
DENNE M. ELIOFF; J.)
ROY ELMS and)
ELIZABETH D. ELMS;)
NEALE M. ENSIGN and)
CHRISTINA H. ENSIGN;)
SONIA D. ERICKSON;)
PETER L. FAVRO; BEN)
H. FERGUSON; DEREK)
FERRIERA and DELORES)
FERRIERA; MOREY B.)
FLEMING and)
DOROTHY R. FLEMING;)
WILLIAM J. FOLEY and)
SHIRLEY J. FOLEY;)
DOUGLAS H. FORD;)
FRANK A. FOTI and)
ROSE A. FOTI; JUDITH)
ANN FRIEDMAN; W.C.)
FROELICH, INC.;)
CLIFFORD A. FROST)
and LORRAINE L.)
FROST; MOSES D.)
GARAY and ROSE)
GARAY; FRANK M.)
GARCIA; LAURA E.)
GARCIA; F.W. GASSER)

and ROSE GASSER;)
LOUIS GEORGE and)
ELIZABETH GEORGE;)
ANNA F. GERACI and)
SALVATORE GERACI;)
ERNEST O. GERMANN)
and VIRGINE M.)
GERMANN;)
CHRISTOPHER P.)
GERSHEL and SHARON)
A. GERSHEL; WILLIAM)
L. GILL; KURT A. GRAF)
and NELLIE O. GRAF;)
ROBERT U. GRANT)
CIVIL ENGINEERING)
CO., INC.; ROGER)
DALE GRESHAM;)
RICHARD H. GUZMAN)
and CLAUDIA D.)
GUZMAN; G.E.M.)
DEVELOPMENT,)
INCORPORATED; DAN)
HAMMON and SHERRIE)
HAMMON; CHARLES S.)
HANSON, JR. and)
VIRGINIA R. HANSON;)
WILSON L. HARRELL;)
DAN M. HAUSERMAN;)
HELEN L. HEDRICK;)
WAYNE F. HESS and)
LORRAINE E. HESS;)
DOUGLAS J. HINDS and)
MARIAN O. HINDS; J.C.)
HINTON and LA VAUN)
E. HINTON; DONALD I.)
HITT; LOREN)

HOLMWOOD; DONNA)
IVY; CARLTON S.)
JAMES; JOHN)
JAVORSKY and HELEN)
JAVORSKY; K.D.)
JEFFERSON and)
WINNIFRED A.)
JEFFERSON; EDWARD)
N. JELLINS and JANET)
L. JELLINS; RUDOLPH)
JOHNSON and PATRICIA)
JOHNSON; ARNE)
JORGENSEN; VINCENT)
S. KEELE and)
TEDDYANNA P. KEELE;)
ROY KERTON and)
LADONNA KERTON;)
MIKLOS J. KISIDAY)
and VALIRIA E.)
KISIDAY; VIRGINIA J.)
KOTECKI; PETER)
LANGE; OLAF O.)
LARSON; CHARLES W.)
LEW; ROBERT E.)
LIVESAY and FRANCES)
M. LIVESAY; HENRY G.)
LOUIE and LOUISE)
LOUIE; IAN D.)
MACGREGOR; MELVIN)
J. MADDEN and RUTH)
L. MADDEN; MARIO A.)
MANDOLI and ALICE)
M. MANDOLI;)
ANTHONY JOHN)
MARAN; DAN H.)
MARSHALL; LEONARD)

MAYRISCH, JR.;)
EDWARD J.)
MCCARTHY; HALL B.)
MC ELREE and)
GEORGETTA B. MC)
ELREE; FRANK J.)
MERRITT AND)
SHARON M. MERRITT;)
HOWARD A. MILLER)
and ANTOINETTA R.)
MILLER; ANKICA)
MILOSAVLJEVIC;)
CHARLES S. MITCHELL;)
CARL V. MODUGNO;)
ERNESTINE H. MOORE;)
ANDREA C. MONIZ;)
ARTHUR L. MONTERO;)
HOWARD V. MORE;)
DEAN L. MORGAN and)
DENA M. MORGAN;)
ANATOLE J.)
MOSKOLENKO; EMIL A.)
NECHVATAL and)
BERNICE M.)
NECHVATAL; JOHN L.)
NEWBILL and ANITA)
L. NEWBILL;)
CONSTANCE NOIA;)
STEPHEN L. NORRIS)
and JACQUELINE)
NORRIS; PETER PANOS)
and SOPHIA PANOS;)
PAUL PAULSON and)
MARILYN PAULSON;)
EDDIE R. PEDERSEN)
and DORIS J.)

PEDERSEN; MERLIN A.)
PORTER and FERN K.)
PORTER; PAUL DAVID)
PORTER, LUCILLE)
PRATHER; RICHARD)
LEE PRITCHETT and)
VIRGINIA RUTH)
PRITCHETT; FRANK A.)
QUADROS and)
FRANCES M.)
QUADROS; WILLIAM R.)
RAMSEY and LINDA R.)
RAMSEY; RUDY)
REGALADO and)
JOSEPHINE M.)
REGALADO; SARAH)
REYNOLDS and)
SARGENT REYNOLDS;)
ROBERT W. RIEB;)
QUENTIN H. RINK;)
GEORGE R. ROBINSON;)
ROCKY RIDGE)
PROPERTIES; LARRY D.)
RUDY; EUGENE SAKAI)
and BETTY SAKAI;)
JOHN G. SANCHEZ and)
MARY M. SANCHEZ;)
E.S. SARRO and)
ELEANOR M. SARRO;)
CHARLES OLIVER SASS;)
PATRICK N. SATALINO;)
DONALD E. SAUNDERS)
and GWEN SAUNDERS)
(DECEASED);)
FREDERICK SCHULZ;)
DAVID J. SHERDEN)

and SHARON L.)
SHERDEN; SEIJI SHIBA;)
BRUCE E. SIMKINS; J.)
ROCKWELL SMITH and)
PATRICIA SMITH;)
BERTRAM S. SOLOMON)
and SYLVIA M.)
SOLOMON; MARK)
THOMAS SPRAGGINS;)
EDWARD K. STEARNS;)
FREDERICK A. STREIB)
and ROSEMARY STREIB;)
SUGARPINE)
INVESTMENTS, INC.;)
A.J. SULME; DONALD P.)
SWAN; TAHOE ALPINE)
PROPERTIES LTD.;)
WILLIAM E. THACKREY)
and SYLVIAN E.)
THACKREY; LORENE)
THOMAS; LINDA A.)
THOMPSON and ALLAN)
J. THOMPSON; ROBERT)
E. TOLBERT and IRENE)
TOLBERT; FRANK W.)
TRABUCCO and MARY)
S. TRABUCCO; JAMES)
R. TREMBATH;)
DONALD PAUL)
TURNER and DORIS A.)
TURNER; U-HAUL CO.)
OF SACRAMENTO;)
NEALAND R.)
UNDERWOOD and)
DELLA UNDERWOOD;)
RON UHARRIET;)

ROBERT URSO; RICHARD G. VENTRESCO and DARLEEN P. VENTRESCO; NORBERT A. WALZ, SR.; CAROLE A. WARD; WEST BAY ENTERPRISES; LAMBERT P. WILLIE; ROBERT H. WILLIAMS; WOODROW H. WILSON and BARBARA C. WILSON; JOHN A. WOLLMAN; ROBERT C. WORKS and PATRICIA W. WORKS; GRACE YA-CHIN LIN PAN; PETER I. YAMAMOTO and MIDORI M. YAMAMOTO; ENRIQUE J. ZOLLNER (DECEASED) and PILAR FERNANDEZ ZOLLNER; THEODORE CAROL ZSUTTY and MARIE ROSE ZSUTTY; VIRGINIA R. ZUCK; and JEFFREY G. ZYBURA and LANA R. ZYBURA.

Plaintiffs,

v.

The TAHOE REGIONAL PLANNING AGENCY, a separate legal entity created pursuant to an interstate Compact between the States of California and Nevada; the State of Nevada; and the State of California,

Defendants.

Plaintiffs allege as follows:

I. INTRODUCTION*

This First Amended Complaint for Inverse Condemnation, Denial of Constitutional and Civil Rights, and Just Compensation and Damages ("First Amended California-Side Complaint") is being filed pursuant to the Order of this Court entered at a status conference held before this Court on March 13, 1992.

This action was originally filed on June 25, 1984 following the adoption by the TRPA of its 1984 Regional Plan as described and alleged more fully hereinbelow. After hearing on motions to dismiss, the District Court entered its Order on January 22, 1985 dismissing the monetary claims against the Defendants. Subsequently, on March 27, 1987, the District Court, after hearing, granted summary judgment to the Defendants as to the remaining claims seeking declaratory and injunctive relief. The matter was then appealed to the Ninth Circuit,

---

* For the convenience of the Court, all additions of new matter to this First Amended Complaint and its Appendices are shown in bold type.

where it was stayed pending that Court's decision in *TSPC I* – the companion Nevada-side case.

Subsequently, following its decision in *TSPC I*, the Ninth Circuit ordered briefing and argument, following which a separate three-judge panel of that Court issued its opinion in this matter on July 8, 1991. (*Tahoe-Sierra Preservation Council, Inc., et al v. Tahoe Regional Planning Agency, et al.*, 938 F.2d 153 (9th Cir. 1991) ["*TSPC II*"].) That unanimous decision in *TSPC II* generally followed the decision of the Ninth Circuit panel in *TSPC I*, except as to that portion of the latter's divided decision in which it had found that Plaintiffs' damage claims arising from its facial challenge against the 1984 Regional Plan were not ripe because Plaintiffs had not first applied for an amendment to that Plan. (*TSPC I*, Section III.A, 911 F.2d 1336-39.) The three-judge panel in *TSPC II* relied on the rational [sic] of Judge Rozinski in his dissent in *TSPC I*, and concluded that the district court had improperly dismissed the Plaintiffs, Section 1983 and Fifth Amendment takings claims-against TRPA for damages caused by the 1984 Regional Plan. Subsequently, the Defendants/Appellees' request for rehearing and/or suggestion for hearing en banc was denied by the Ninth Circuit on September 19, 1991, and the matter remanded to this Court on December 10, 1991. Thus, on remand to the District Court, two separate Ninth circuit opinions offer direction and guidance.

Thereafter, with the concurrence of the parties, the Eastern District of California transferred venue of this case (the California-side case) to the District of Nevada. By its order dated February 21, 1992, this Court then

ordered the consolidation of the instant case (the California-side case) with the pending Nevada-side companion case. [See Introduction to First Amended Nevada-side Complaint filed on October 28, 1991 for additional explanatory background.]

To respond to the directions of the Ninth Circuit and related issues, this First Amended Complaint is being filed to address the following specific matters:

(1) This First Amended Complaint dismisses 149 individual Plaintiffs owning 91 separate properties, as those Plaintiffs have chosen no longer to pursue this litigation having previously sold their property to a public buy-out agency. All references in this Complaint and related Appendices to these Plaintiffs have been deleted: (294 named Plaintiffs owning 258 lots/parcels remain in this action.) Also dismissed are the voting members of the TRPA Governing Body named as defendants in the original Complaint.

(2) The First, Third, and Fourth Claims for Relief in the original complaint have been deleted pursuant to the direction of the Ninth circuit that they be dismissed by the district court on mootness grounds. The Sixth Claim for Relief has also been voluntarily dropped, as Plaintiffs are unable to make the showing required by the Ninth Circuit that it was TRPA itself which collected the assessments for the public improvements at issue. In addition, certain portions of the general allegation provisions of the original Complaint bearing on these foregoing claims have also been

deleted for clarification and simplification. The remaining Second, Fifth, and Seventh Claims have been retained and renumbered in the amended Complaint as the First, Second, and Third Claims for Relief respectively.

(3) While the Ninth Circuit, in both *TSPC I* and *TSPC II*, made it clear that the Plaintiffs' takings claims commenced on June 25, 1981, the date of adoption of the predecessor interim ordinance 81-5, the length or terminal point of the "takings period" for each Plaintiff is yet to be determined. While it is true that TRPA adopted its new 1987 Regional Plan on June 1, 1987, which superseded its earlier 1984 Regional Plan (and ordinance 81-5), nevertheless that 1987 Regional Plan effectively carried forward, until at least July 1, 1989, and as to the SEZ Plaintiffs until the present, the very same total prohibitions on building or use of lots identified as SEZ, or Class 1, 2, and 3 originally established in ordinance 81-5 and made permanent by the 1984 Regional Plan. Even when the 1987 Regional Plan's new individual Parcel Evaluation System (IPES) formally took effect on July 1, 1989, as described more fully below, a significant number of named Plaintiffs' properties were again classified or scored by TRPA in manner that continued to make them unbuildable, therefore prolonging the period of total denial and prohibition on the use of those properties originally resulting from the enactment of the 1984 Regional Plan and the predecessor Ordinance 81-5. Further, during the course of

this litigation, a substantial number of the named Plaintiffs were compelled, absent any other economically viable alternative, to sell their properties to the U.S. Forest Service or the State of California pursuant to the public buy-out programs of those agencies. While the takings period applicable to those named Plaintiffs, properties can be said to have ended as of the date of those sales, as set forth in this First Amended Complaint Plaintiffs contend that the take-it-or-leave-it purchase prices offered by those buy-out agencies fell far short of providing constitutionally-required Just Compensation, in that in most cases those government acquisition prices had been substantially depressed by virtue of TRPA's absolute prohibition on building on Plaintiffs, properties. In no event did the compensation offered to or received by any of the named Plaintiffs provide them just compensation for the period of the temporary taking prior to the date of the acquisition by the public buy-out agency. Specific allegations bearing on events that transpired after the date of the filing of this action which go to the issue of the length of the takings period for each named Plaintiff are set forth hereinbelow at Paragraphs 31-34, as well as in the specific allegations regarding the circumstances applicable to each of the properties at issue in this action set forth in the pertinent Appendices attached hereto and incorporated herein.

(4) Additionally, as relevant to the claims made herein, certain additional allegations are included to "conform to proof" and/or to

determinations made by the district court or the Ninth Circuit in the previous proceedings in this matter, such as clarifying the relationship of the predecessor interim ordinance 81-5 which the Ninth Circuit specifically found had been "made permanent" by the 1984 Regional Plan.

(5) Finally, certain changes are made for clarification, consistency, simplification, or editorial correction, and paragraphs and/or claims have been re-numbered appropriately.

II. JURISDICTION AND VENUE

1. **This action alleges a regulatory taking of private property without Just Compensation in contravention of the Fifth and Fourteenth Amendments to the Constitution and a violation of 42 U.S.C. §§ 1983 and 1985 arising from the enactment by the Defendant TAHOE REGIONAL PLANNING AGENCY ("TRPA") of certain land use regulatory measures described hereinafter. Plaintiffs assert those regulatory measures denied them all reasonable use of their private property for a substantial period of time, generally for periods of at least 6 to 11 years. The Defendant TRPA is a bi-state planning body formed by an interstate compact, and this action therefore arises under the** Compact Clause (Article 1, Section 10, Clause 3) of the Constitution of the United States, the Fifth and Fourteenth Amendments to the Constitution of the United States, the Federal Civil Rights Act (42 U.S.C. Secs. 1983 and 1985), 28 U.S.C. Secs. 2201 and 2202 (Declaratory Relief), and the Tahoe Regional Planning Compact (P.L. 96-551; 94 Stat. 3233) as

hereafter more fully appears. Jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Secs. 1331 and 1343 and Article VI(j) of the Tahoe Regional Planning Compact (hereafter the "Compact").*

---

* Article VI(j) of the Compact reads in pertinent part:

"(j) Legal actions arising out of or alleging a violation of the provisions of this compact, of the regional plan or of any ordinance or regulation of the agency or of a permit or a condition of a permit issued by the agency are governed by the following provisions:

(1) This subdivision applies to:

(A) Actions arising out of activities directly undertaken by the agency.

(B) Activities arising out of the issuance to a person of a lease, permit, license or other entitlement for use by the agency.

(C) Actions arising out of any other act or failure to act by any person or public agency.

Such legal actions may be filed and the provisions of this subdivision apply equally in the appropriate courts of California and Nevada and of the United States.

(2) Venue lies:

(A) If a civil or criminal action challenges an activity by the agency or any person which is undertaken or to be undertaken upon a parcel of real property, in the state or federal judicial district where the real property is situated.

(B) If an action challenges an activity which does not involve a specific parcel of land (such as an action challenging an ordinance of the agency), in any state or federal court having jurisdiction within the region.

2. Venue is proper in this Court pursuant to Article VI(j) of the Compact and 28 U.S.C. Secs. 1391 et seq., in that all real properties which are the subject of this action are situated in the State of California.

III. NATURE OF ACTION

3. This action challenges the validity and constitutionality of certain specific provisions of the "Regional Plan for the Lake Tahoe Basin" adopted on April 26, 1984 (hereafter the "Regional Plan" **or the "1984 Regional Plan"**) by the Governing Body of the Defendant TRPA, allegedly pursuant to the Tahoe Regional Planning Compact*, **which Regional Plan provisions made**

---

(3) Any aggrieved person may file an action in an appropriate court of the State of California or Nevada or of the United States alleging noncompliance with the provisions of this compact or with an ordinance or regulation of the agency. * * *

(4) A legal action arising out of the adoption or amendment of the regional plan or of any ordinance or regulation of the agency . . . shall be commenced within 60 days after final action by the Agency. * * * "

* The original Tahoe Regional Planning Compact, an interstate agreement, was adopted by the States of California and Nevada and approved by the Congress and signed by the President on December 18, 1969. See P.L. 91-148, 83 Stat. 360; California Government Code Section 66801; Nevada Revised Statute 277.200. Said Compact was extensively amended in 1980 by legislative enactments of the States of California and Nevada, which were then approved by the Congress and signed into law by President Carter on December 19, 1980. See P.L. 96-551, 94 Stat. 3233; California Government Code Section 66801; Nevada Revised Statute 277.200. Unless otherwise indicated all references to the Compact are to the 1980 amended Compact.

permanent the nearly identical provisions contained in the predecessor interim ordinance 81-5 adopted by the TRPA Governing Body on June 25, 1981. Combined, those measures directly and specifically prohibited any reasonable, practical, viable, beneficial, or feasible use of thousands of legally-created lots or parcels of privately-owned real property in the Lake Tahoe Basin, and specifically precluded the construction of single-family homes on, or any other reasonable use of, the lots or parcels owned by those Plaintiffs who are parties to this action (named Plaintiffs). **Further, as alleged more fully hereinbelow, while the 1984 Regional Plan was subsequently superseded by TRPA's adoption of a revised 1987 Regional Plan for the Lake Tahoe Basin which became effective on June 1, 1987 ("the 1987 Regional Plan"), that 1987 Regional Plan continued in effect for an additional lengthy period of time, and in the case of certain named Plaintiffs until the present, the same complained-of regulatory prohibitions made applicable to the named Plaintiffs' properties by the 1984 Regional Plan and the predecessor interim ordinance 81-5, all as more specifically alleged hereinafter.** This action is brought by the Plaintiff TAHOE-SIERRA PRESERVATION COUNCIL, INC. (hereafter "PRESERVATION COUNCIL"), a non-profit membership organization whose principal purpose is to represent the interests of Lake Tahoe area property owners who are its members, and by the 294 individually-named Plaintiffs, each of whom is the owner of real property located within the Lake Tahoe Basin subject to the prohibitions and restrictions contained in the Regional Plan complained of herein. Specifically, this

action seeks **just compensation** and/or monetary relief based on the following claims:

A. ***FIRST (Formerly SECOND) CLAIM FOR RELIEF*: Stream Environment Zone** ("SEZ") properties – Damages for Violation of Fifth and Fourteenth Amendment Protections Against Taking Private Property Without Just Compensation.

B. ***SECOND (Formerly FIFTH) CLAIM FOR RELIEF***: Class 1, 2, and/or 3 Properties – Damages for Violation of Fifth and Fourteenth Amendment Protections Against Taking Private Property Without Just Compensation.

C. ***THIRD (Formerly SEVENTH) CLAIM FOR RELIEF***: Violation of the Federal Civil Rights Act (42 U.S.C. 1983 and 1985).

IV. PARTIES

4. Plaintiff PRESERVATION COUNCIL is a California non-profit public corporation, in good standing, incorporated on January 16, 1981, under the laws of the State of California, and has its principal office in the State of California. The PRESERVATION COUNCIL is a membership organization representing approximately 2,000 dues-paying members who own private real property, both improved and unimproved, located in the Lake Tahoe Basin, which real properties are subject to the planning and regulatory jurisdiction of Defendant TRPA*.

---

* Article II (a) of the Compact defines the precise geographical boundaries of the "region" subject to the

The principal purpose of the PRESERVATION COUNCIL is to serve and actively represent the interests of its members, individually and collectively, before the Defendant TRPA and other legislative bodies and regulatory agencies in connection with its members' use and enjoyment of their private properties located in the Lake Tahoe Basin, and to ensure the rights and interests of its members are fully represented and protected insofar as possible. All of PRESERVATION COUNCILS' members owning real property in the Lake Tahoe Basin have a direct interest in the planning and regulatory activities of TRPA, and particularly in the specific provisions of the **1984** Regional Plan complained of herein which directly and specifically prohibited any reasonable or practical use of certain private real property as more fully set forth hereafter. Among its members are each of the named Plaintiffs joining in this action, each of whom own legally-created lots or parcels of real property located within the Lake Tahoe Basin, which properties are located in areas either identified by the **1984** Regional Plan as a so-called Stream Environment Zone ("SEZ") or in a so-called Land Capability Class 1, 2, and/or 3 area, and therefore are subject to the permanent prohibitions and restrictions imposed by the Defendant TRPA set forth in its **1984** Regional Plan, **its predecessor interim ordinance 81-5, and which were continued in full force and effect even after adoption of its revised 1987 Regional Plan, all as described more fully hereafter.** Additionally, the PRESERVATION COUNCIL members include numerous

---

jurisdiction of the TRPA. For purposes of this Complaint, that region is commonly identified herein as the "Lake Tahoe Basin".

others who also own properties in the Lake Tahoe Basin subject to the prohibitions on use of SEZ or Class 1, 2, and/or 3 properties imposed by the Defendant TRPA which are the subject of this action. The PRESERVATION COUNCIL, through its authorized representatives, actively participated in the entire TRPA regional planning process leading to the adoption of the **1984** Regional Plan at issue in this action, and attended and expressed its views and concerns, orally and in writing, at each public hearing held by the Defendant TRPA in connection with the consideration of the **1984** Regional Plan at issue herein, **as well as in connection with the adoption of Ordinance 81-5 and the revised 1987 Regional Plan addressed herein**. The PRESERVATION COUNCIL, and its members who own real property within the Lake Tahoe Basin and who have made substantial financial investments in their property, are directly and vitally interested in the protection and the preservation of the unique environmental and scenic resources of the Lake Tahoe Basin, and firmly believe that **that** protection and preservation can be achieved in a manner consistent with the protections guaranteed by the United States Constitution and other applicable laws (thus the name PRESERVATION COUNCIL). The PRESERVATION COUNCIL therefore brings this action as a matter of public right to compel Defendants, and each of them, to perform their public duties and responsibilities in a manner that is fully consistent with their statutory and Constitutional obligations.

5. Each of the named Plaintiffs listed in Appendices I and II* hereto are owners of one or more lawfully-created, vacant or undeveloped lots or parcels of real property located in the State of California within the jurisdiction of the Defendant TRPA, which lots or parcels **were** subject to the specific and direct prohibitions on any reasonable, practical, beneficial, feasible, or viable use set forth in the **1984** Regional Plan, **and the predecessor interim ordinance 81-5 and successor 1987 Regional Plan**, due to the fact they appeared to be substantially in areas identified as so-called "Stream Environment Zone". Additional relevant factual allegations regarding each of such Plaintiffs, and the real property of each Plaintiff at issue, are set forth in Appendices I and II hereto, applicable to Plaintiffs owning SEZ properties within the Counties of Placer and El Dorado respectively, State of California, which Appendices are incorporated herein as if set forth here in full.

---

* In order to provide for a more orderly pleading, all of the detailed allegations specifically regarding the property and interests of each individual Plaintiff are set forth in separate Appendices, grouped by geographical jurisdiction and category of property involved, which Appendices are identified by an appropriate designation: Appendix I – Plaintiffs Owning SEZ Properties located in Placer County; Appendix II – Plaintiffs Owning SEZ properties in El Dorado County; Appendix III – Plaintiffs owning Class 1, 2, and/or 3 Properties Located in Placer County; and Appendix IV – Plaintiffs Owning Class 1, 2, and/or 3 Properties Located in El Dorado County. **The Appendices, which have been amended to bring them current as of the time of filing this First Amended Complaint, also allege with specificity the period and related circumstances of the taking alleged to have occurred as to each Plaintiff's property.**

6. Each of the named Plaintiffs listed in Appendices III and IV hereto are the owners of one or more lawfully-created, vacant or undeveloped lots or parcels of real property located in the State of California within the jurisdiction of the Defendant TRPA, which lots or parcels **were** subject to the specific and direct prohibitions contained in the **1984** Regional Plan, **and the predecessor interim ordinance 81-5 and successor 1987 Regional Plan**, precluding any reasonable, practical, beneficial, feasible, or viable use by virtue of their designation and restrictions imposed in the Regional Plans, and accompanying Plan Maps, as being substantially in an area identified as a Land Capability District 1, 2, and/or 3. Additional relevant factual allegations regarding each of such Plaintiffs, and the specific real property of each Plaintiff at issue, is more particularly set forth in Appendices III and IV hereto, applicable to Plaintiffs owning properties in areas identified as within a Land Capability Class 1, 2, and/or 3 area within the Counties of Placer and El Dorado respectively, State of California, which Appendices are incorporated herein as if set forth here in full.

7. Defendant TRPA is a separate legal entity created by the interstate Compact between the States of California and Nevada (see Compact, Article III (a)). Defendant TRPA is under the direction of a Governing Body consisting of 14 voting members (and one non-voting representative appointed by the President pursuant to Sec. 3 of P.L. 96-551), and is otherwise subject to and directed by the provisions of the Compact. Defendant TRPA, acting through the required affirmative vote of the Defendant members of its Governing Body, duly adopted the **1984**

Regional Plan, **and the predecessor interim Ordinance 81-5 and successor 1987 Regional Plan**, and the **pertinent** policies **or provisions included** therein, prohibiting any reasonable use of Plaintiffs' private real properties.

8. Defendant State of California and Defendant State of Nevada are the parties to the bi-state Compact, a contract between the two States. Each State adopted identical legislation creating the bi-state TRPA, including the 1980 amendments to the Compact. Each State has delegated, transferred, or conferred a part of its sovereign powers to the TRPA and invested the TRPA with the police powers it purports to exercise in adopting those portions of its Regional Plan at issue herein. Each State appointed or designated four "State representatives" to serve on its respective 7-member delegation*. The

---

* Article III(a) of the Compact provides for the following representation on the 7-member delegations to the TRPA Governing Body from each state:

California: 2 members appointed by the Governor; 1 member appointed by the Speaker of the Assembly; 1 member appointed by the Senate Rules Committee (all of the foregoing "shall represent the public at large within the State of California"; 1 member appointed by each of the Boards of Supervisors of Placer and El Dorado Counties; and 1 member appointed by the City Council of the City of South Lake Tahoe.

Nevada: 1 member appointed by the Governor; the Secretary of State or his designee; the Director of the State Department of Conservation and Natural Resource (all of the foregoing "represent the public at large within the State of Nevada"); 1 member appointed by each of the County Commissioners of Douglas and Washoe Counties; 1 member appointed by the Board of Supervisors of Carson City; and a seventh member appointed by the six other members, or by the Governor (as is the case with the current appointee), in the event the other six cannot agree on the seventh.

appointed representatives of each State directly participated in the deliberations and votes approving those portions of the **1984** Regional Plan **and other regulatory measures** at issue herein. Each State has accepted the obligation to provide funding for the operation and activities of the Defendant TRPA as provided in Article VII(A) of the Compact. Further, each Defendant State independently enacted legislation and/or related mandates requiring the collection and export of all sewage waste from the Lake Tahoe Basin, and requiring the construction of major sewer treatment facilities and sewer collection and transport systems, which were constructed and funded under the applicable requirements and laws of each State, in part by assessments levied against all affected private properties including the properties of the named Plaintiffs. Each State is now a party to those actions by the Defendant TRPA which deny and deprive the named Plaintiffs of the benefits from the improvements for which they have been assessed and paid, all as more specifically complained of hereafter.

V. FACTUAL BACKGROUND

9. The Lake Tahoe "region" ("Lake Tahoe Basin") is that area defined in Article II (A) of the Compact. It lies within the boundaries of the States of California and Nevada, and is within the geographical boundaries of the following local government jurisdictions – Placer County, California; El Dorado County, California; Washoe County, Nevada; the unincorporated portion of Carson City, Nevada; and Douglas County, Nevada. The City of South Lake Tahoe lying within the El Dorado County portion of the Basin is the only incorporated city in the region. Both

Defendant States, and the aforementioned local governments, pursuant to applicable state laws and local ordinances, exercise land use regulatory jurisdiction within their respective areas and have adopted general planning and/or zoning requirements for their respective portions of the Lake Tahoe Basin as well as statutory procedures for the division of land into lots or parcels. Further, **as of the date of filing this action**, approximately 66% of the land area of the Lake Tahoe Basin **was** within the ownership of the United States government, managed by the United States Forest Service. A total of approximately 72% of the Lake Tahoe Basin **(as of the date of filing this action) was** publicly owned, either by the Forest Service or other federal agencies, by the Defendant States, or by local government jurisdictions. Approximately 28% of the land areas of the Lake Tahoe Basin are currently in private ownership, and approximately 15% of the Lake Tahoe Basin is considered to be "urbanized".

10. Commencing in the late 1800's, in response to demands from families and individuals seeking summer homesites in the Lake Tahoe Basin, the first single-family home subdivisions were "platted" and lot sales commenced, mostly along the California shoreline of Lake Tahoe. By World War II, a large number of single-family lots had been created, mostly on the California side of the Basin, but with some on the Nevada side of the Lake Tahoe Basin. Following World War II, there was a marked increase in the urbanization of the Lake Tahoe Basin as a result of major population increases in the western United States and the desire for vacation homesites and permanent residences in the Lake Tahoe Basin. Commencing in the early 1950s and extending well into the

1970s, in response to the increased population demands and growth in the western United States, public policy of the federal, state and local governments permitted and authorized, and even encouraged, the creation of single-family residential homesites, mostly in single-family subdivisions, in the Lake Tahoe Basin. Taken as a whole, the activities and policies of the federal, state and local governments have encouraged, authorized, and approved the creation and sale of thousands of private parcels and lots, primarily as single-family homesites, within the Lake Tahoe Basin, including specifically those lots or parcels owned by the named Plaintiffs as alleged herein.

11. In the late 1960s, after extensive consideration, debate, and negotiations, the States of California and Nevada each adopted the necessary enabling legislation to create the initial TAHOE REGIONAL PLANNING AGENCY, which **bi-state compact**, after Congressional approval, was signed by President Richard Nixon on December 18, 1969. (P.L. 91-148, 83 Stat. 360; California Government Code Section 66801; and N.R.S. 277.200).

12. Pursuant to the initial Compact, the TRPA's **original** Governing Body of 10 members was created and mandated to adopt a Regional Plan for the Tahoe Basin within 18 months after formation of the Agency. After the initial adoption of an interim Plan, the Governing Body undertook a detailed study of the Lake Tahoe Basin, and after extensive debate and discussions, finally adopted a new Regional Plan in December 1971 (**the "1971 Regional Plan"**). Thereafter, during 1972, the TRPA Governing Body adopted a number of ordinances implementing the Plan, including it [sic] Land Use Ordinance (Ordinance No. 4) adopted February 10, 1972. Pursuant to that 1971

Regional Plan and 1972 Land Use Ordinance, the entire Basin was overlaid with a new set of land use districts or zoning which substantially downzoned the Basin from the theoretical capacity then permitted under local government plans and ordinances.

13. The 1972 Land Use Ordinance and 1971 Regional Plan specifically recognized the legitimacy of existing, lawfully created single-family lots. Thus, Section 9.13 of the 1972 Land Use Ordinance provided:

> "One (1) single-family house may be constructed on any existing legal lot or parcel of record as of February 10, 1972, that is located in any district except Tourist Commercial or General Commercial, provided, however, that this section shall not, apply to lots in residential subdivisions where the final map of such subdivision was approved and filed for record more than five (5) years prior to February 10, 1972, and there has been no constructions of roads, sewers or other substantial facilities serving the subdivision, or the posting of performance bonds assuring such construction, prior to February 10, 1972."

Additionally, pursuant to said 1971 Regional Plan and 1972 Land Use Ordinance, as well as its Subdivision Ordinance (Ordinance No. 7) adopted on March 22, 1972, the Defendant TRPA established a process to review and approve additional new subdivision proposals intended to create additional single-family lots and parcels, and thereafter continued until December, 1980 to accept applications and process and approve proposals for new single-family subdivisions within the Lake Tahoe Basin,

thereby authorizing the creation of additional single-family lots or parcels.

14. Commencing in 1969, the United States Forest Service and the Defendant TRPA cooperated in a joint environmental land-use planning study of the Lake Tahoe Basin. During 1971, the Forest Service, in cooperation with the Defendant TRPA, completed a reconnaissance-level land capability study of the Lake Tahoe Basin. Soil and geomorphic information was compiled on maps at a scale of 2 inches to the mile, from which a Land Capability Map was prepared for the Basin which was subsequently utilized in the 1971, TRPA Regional Plan. Additionally, a detailed report, entitled "Land Capability Classification of the Lake Tahoe Basin, California-Nevada, A Planning Guide", was written and prepared by Robert G. Bailey, an employee of the Forest Service, **and others**, which report was issued in 1974 (the so-called "Bailey Report"). Pursuant to that joint land capability study, all lands within the Tahoe Basin were divided into seven principal categories, or Land Capability Classes, distinguished according to the theoretical risk of erosion or disturbance hazards. Class 1 areas include those areas that have the highest theoretical risk of runoff or erosion due primarily to soil types and steeper slopes, **while** Class 7 areas are those where the existence of such conditions is theoretically negligible. Additionally, the "Bailey Report" and **Bailey** Land Capability Map recommended that, for planning purposes, area-wide limits be placed on "allowable impervious cover" (man-made coverage such as footprints of houses and buildings, driveways, highways and roads, and other similar impervious coverage) ranging from 1% allowable coverage in Class 1 areas up

to 30% in Class 6 and 7 areas. The land capability criteria were incorporated in the Defendant TRPA's 1971 Regional Plan and 1972 Land Use ordinance with additional requirements **that** expressly permitted the construction of single-family homes on lots and parcels identified in all land capability areas, subject to certain limits and other regulations contained in the Plan and implementing ordinances.

15. In 1978, the Defendant TRPA approved its "Lake Tahoe Basin Water Quality Management Plan" (hereafter the "1978 Water Quality Management Plan") pursuant to Section 208 of the Federal Clean Water Act (P.L. 92-500), which 1978 Water Quality Management Plan became the water quality element of TRPA's Regional Plan. The 1978 Water Quality Management Plan set forth programs for waste management, surface water runoff management, erosion control, and a program for implementation. Also, for the first time, it identified and delineated areas known as Stream Environment Zones (SEZs). The Plan described a Stream Environment Zone as:

> "*Stream Environment Zone* – That region: 1) which surrounds a stream, including major streams, minor streams and drainageways, which owes it [sic] biological and physical characteristics to the presence of water; 2) which may be inundated by a stream; or 3) in which actions or man or nature may directly or indirectly affect the stream. A stream includes small lakes, ponds, and marshy areas through which the stream flows." (1978 TRPA Water Quality Management Plan, Vol. II, p. III-2

The SEZs were the [sic] delineated on the 1" = 400' scale land use/land capability maps of the Defendant TRPA

using the procedures found in the 1978 Water Quality Management Plan (Page VI-13 through 15 of Volume I, and Pages III-2 through 6 of Volume II). The mapping also included a buffer strip on either side of stream channels ranging in width from 25 feet to 100 feet, depending on the order or magnitude of the stream. The 1978 Water Quality management Plan also set forth construction requirements in Volume II *Handbook of Best Management Practices* ("BMPs) for all construction occurring within an identified SEZ, which requirements were intended to minimize or avoid the potential adverse impacts of construction within Stream Environment Zones. Those BMPs provided in part that where a parcel or lot was substantially with the boundaries of a SEZ zone, then any new construction would be permitted only if it was sited on the best available site on the property taking into consideration drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from the natural channel. Accordingly, the 1978 Water Quality Management Plan continued to permit the reasonable use of the parcels or lots owned by those named Plaintiffs as being in SEZ areas, provided construction of new homes on those SEZ lots took place in strict accordance with the requirements, including the BMPs, set forth in the 1978 Water Quality Management Plan.

16. As of December 19, 1980, the effective date of the amended Compact, the named Plaintiffs, and each of them, were the owners of one or more legally-created lots or parcels of record of real property within the Lake Tahoe Region, as more specifically described and set forth in Appendices I through IV to this Complaint. Each of

such lots or parcels owned by named Plaintiffs was legally created, approved, and sold to named Plaintiffs, or their predecessors in interest, pursuant to the legal requirements of the Defendant State of California, and the applicable local government and/or TRPA requirements for the creation of such lots or parcels. The zoning and other land-use requirements of each of the affected local government agencies having jurisdiction over said properties authorized, and continue today to authorize, the named Plaintiffs to construct a single-family home on each parcel of record or make other reasonable use thereof. Additionally, as set forth above, the lawfully-adopted Regional Plan and ordinances of the Defendant TRPA in force and effect on December 19, 1980, including the 1978 Water Quality Management Plan described above and the ordinances, rules and regulations adopted thereunder, authorized the construction of at least one single-family home on each of the parcels or lots owned by the named Plaintiffs. Further, nearly all of the parcels or lots owned by the named Plaintiffs are located in existing single-family neighborhoods or subdivisions which are today partially built-out with other single-family homes (ranging from 20% to 90% built-out). Nearly all of those single-family subdivisions are currently served by paved roads, water systems, and sewage collection and treatment facilities, as well as electrical power, telephone service, and other necessary utilities. As set forth with greater specificity in Appendices I through IV hereto, Plaintiffs, and their predecessors in interest, as the owners of said real properties, have been obligated to pay those assessments and special taxes assessed against their respective properties in partial

payment for the sewer systems, water systems, roads and other improvements designed and intended to serve homes and other structures to be built upon their properties. Further, each of the named Plaintiffs, in purchasing their property and in continuing to make substantial payments in the way of property taxes and bond assessments **for public improvements**, have done so in reliance on the fact that their lots or parcels were legally-created and zoned for the purposes set forth with greater specificity in Appendices I through IV, primarily for the purpose of ultimately constructing a single-family home to serve as a permanent, retirement or vacation residence. Further, Plaintiffs have relied in good faith, and now to their detriment, upon the actions of the Defendant States and the Defendant TRPA in purchasing their properties, with the understanding that until at least December 19, 1980, their properties were considered to be lawfully-created lots or parcels upon which Plaintiffs, provided they complied with all reasonable requirements for building and construction, could proceed to make a reasonable use by building thereon a home or other structure at a time of their choosing.

VI. 1980 AMENDED COMPACT, INTERIM ORDINANCE NO. 81-5, AND 1984 REGIONAL PLAN AND PROHIBITIONS ON USE OF PLAINTIFFS' PROPERTIES*

17. In the late 1970s, because of concerns about alleged weaknesses in the initial TRPA Compact,

---

* True and correct copies of the Regional Plans and ordinances referred to in this First Amended Complaint will be submitted in evidence, or lodged with the Court, in a timely manner when this matter is set for hearing.

legislators from the States of California and Nevada met in private to negotiate amendments to the initial Compact. Those amendments were subsequently adopted by the Nevada Legislature at a special session of that Legislature held in September, 1980, and signed by its Governor, and thereafter adopted by the California Legislature and signed by its Governor. The legislation was then ratified by the Unites [sic] States Congress (with minor amendments added in Sections 2 through 5 of P.L. 96-551) and approved by President Carter on December 19, 1980, at which time the amended Compact became effective. The amended Compact dramatically changed the makeup, functions, and duties of the Defendant TRPA and its Governing Body, including among numerous others the following: an increase in the composition of the Governing Body from 10 to 14 voting members; changes in the Governing Body's voting procedures for taking actions upon certain matters as set forth in Article III(g) of the Compact, including the requirement that at least 4 members of each State's delegation (a total of at least 8) act to approve the environmental threshold carrying capacities and Regional Plan amendments described hereafter; changes in the project review procedures (Articles III(g)(2), V(g) and VI(b)); and the addition of a new Article VII requiring preparation of Environmental Impact Statements for certain project. The amended Compact also required that the Defendant TRPA, acting through its Governing Body, do the following:

(a) Within 18 months after the effective date of the amendments to the Compact, the Defendant TRPA was required to adopt "environmental threshold carrying capacities" for the region; and

(b) Within one year after the adoption of the environmental threshold carrying capacities, TRPA "shall amend the regional plan (the 1971 Regional Plan) so that, at a minimum, the plan and all of its elements, as implemented through agency ordinances, rules and regulations, achieves and maintains the adopted environmental threshold carrying capacities." (Article V(b) and (c))

Article V(c) of the Compact then sets forth at length and with specificity the nature and content of the required amendments to the Regional Plan.

18. Pursuant to the provisions of Article VI(a) of the Compact, Defendant TRPA was required to adopt "all necessary ordinances, rules, and regulations to effectuate the adopted regional plan". Pursuant to Article VI(b), "No project (defined in Article II(h)) . . . may be developed in the region without obtaining the review and approval of the agency and no project may be approved unless it is found to comply with the regional plan and with the ordinances, rules and regulations enacted pursuant to subdivision (a) to effectuate that plan".

19. Pursuant to Article VI(c) of the Compact, a "limited moratorium" was also placed into effect, commencing December 19, 1980, to last during the 30-month planning period in order to "halt temporarily works of development in the region which might otherwise absorb the entire capability of the region for further development or direct it out of harmony with the ultimate plan". That moratorium placed numerical limits on the number of building permits which could be authorized for new

residential units or commercial projects, temporarily prohibited new subdivisions, planned unit developments, or condominium projects that had not previously received a complete tentative map, and imposed other limitations on public works, casinos, and other development "until the regional plan is amended pursuant to subdivision (c) of Article V, or until May 1, 1982, whichever is earlier."

20. In addition to the interim moratorium imposed by Article VI(c) of the Compact, the TRPA Governing Body, acting on its own initiative, shortly after being reconstituted by the amended Compact, proceeded to consider and adopt amendments to its 1978 Water Quality Management Plan, allegedly to meet a mandate of the State of California and the United States Environmental Protection Agency, which amendments were adopted by way of TRPA's Ordinance 81-5 which was passed and adopted by the Defendant TRPA on June 25, 1981. Pursuant to the applicable provisions of Ordinance No. 81-5, the following interim prohibitions were placed into effect:

A. An interim prohibition was placed upon any construction, use or activity on lands within Land Capability Districts 1, 2, or 3, with a very limited exception **applicable *only*** on the Nevada side of the Basin permitting approval of construction of some single-family homes on Class 1, 2, and/or 3 lots pursuant to a "case-by-case system" set forth in the Ordinance (**no such exception was applicable to california-side properties**), and with the exception of certain residential remodeling and reconstruction, public works projects, outdoor recreation facilities, and other specific exceptions set forth in Sections 2.00 of the Ordinance.

B. As to SEZ lands, Ordinance 81-5 also implemented a Basin-wide "interim prohibition" on any construction, work, use or activity upon lots or parcels substantially within areas identified as a SEZ, with certain limited exceptions for public works projects, man-modified areas, and approved erosion control work. The interim prohibition on construction on lots or parcels within SEZs expired on April 26, 1984, upon the adoption of the amendments to the 1984 Regional Plan, at which time it was replaced by the permanent prohibitions and restrictions described hereafter.

In summary, **by the adoption of its Ordinance 81-5,** an interim moratorium was imposed by the Defendant TRPA, commencing on June 26, 1981, and continuing until April 26, 1984, which prohibited construction of single-family homes, other buildings, **or any other viable use** of the lots or parcels of record owned by named Plaintiffs **found by TRPA to be** in Stream Environment Zone areas, or in Land Capability Districts 1, 2, and/or 3. The interim moratorium **was** replaced **by the 1984 Regional Plan containing** an even more severe, *permanent,* Basin-wide prohibition that precluded any reasonable or practical use whatsoever of named Plaintiffs' properties, all as more particularly alleged hereafter. **Further, as alleged more fully below, that permanent prohibition established by the 1984 Regional Plan was continued in effect by the pertinent provisions of the successor 1987 Regional Plan, which 1987 Plan superseded the 1984 Regional Plan as of June 1, 1987.**

21. On August 26, 1982, acting pursuant to its Resolution No. 82-11, the Governing Body of the Defendant

TRPA adopted the "environmental threshold carrying capacities" provided for in Article V(b) of the Compact.

22. On August 26, 1983, due to the failure of the Defendant TRPA's Governing Body to adopt its amended Regional Plan within the one year required after adoption of the environmental threshold carrying capacities, and allegedly because it could not make the requisite project-approval findings set forth in Article V(g) of the Compact, the Defendant TRPA imposed by resolution still another moratorium prohibiting its staff from accepting or processing any additional applications for projects, including single-family home construction or other reasonable uses on Plaintiffs' properties, which additional moratorium extended by its terms until April 26, 1984, the date of adoption of the amended Regional Plan (**the so-called "8-month moratorium"**).

23. On March 29, 1984, the Defendant TRPA Governing Body finally approved on first reading, nearly one year after the Compact's deadline, the amendments to its **1984** Regional Plan at issue herein by approving its ordinance No. 84-1. On April 26, 1984, the Governing Body adopted its Ordinance No. 84-1 on second reading, thereby approving said amendments to its Regional Plan which became effective that date.* The **1984** Regional

---

* The Regional Plan amendments were originally adopted on the key "first reading" by the Defendant TRPA Governing Body by a 9-3 vote of its members, a bare one vote majority **over the required four votes from each state** (2 members absent). On the perfunctory "second reading", it was confirmed in a show of unity by a 13-0 vote (1 member absent). Pursuant to Article VI(a), the Ordinance approving the amendments to the Regional

Plan consisted of a number of documents and maps, all as more specifically listed and identified in Section 2.00 of Ordinance No. 84-1. Additionally, the 1984 Regional Plan included a number of Plan Maps and overlays, also adopted by Ordinance No. 84-1, including "Land Capability Overlays" (applicable copies of TRPA's Plan Maps showing the lots or parcels of the named Plaintiffs are included as part of the Appendices hereto). Said Plan Maps depicted the boundaries of Class 1, 2, and 3 areas, and SEZ boundaries (shown as "lb" areas), subject to the caveat contained in Section 2.14 of Ordinance 84-1, and depicted each lot or parcel owned by the named Plaintiffs at issue in this action.

24. The EIS for the 1984 Regional Plan prepared and approved by the Defendant-TRPA and other supporting documentation for the amendments to the 1984 Regional Plan identified approximately 19,300 vacant, lawfully-created, single-family lots or parcels that existed as of the effective date of adoption of the 1984 Regional Plan within the Lake Tahoe Basin, the great majority of which are located in partially built-out, fully approved and developed, single-family subdivisions served by roads, sewers, water, and other utilities. The 1984 Regional Plan continued to recognize such subdivisions as appropriate and proper locations for single-family residences and neighborhoods. Of those remaining vacant, lawfully-created, existing single-family lots or parcels of record, based upon the computerized data base of the Defendant TRPA it was estimated that there were approximately

---

Plan became effective on April 26, 1984 when passed on second reading.

6,400 lots or parcels partially or wholly in areas identified on the Plan Maps as in Land Capability Districts 1, 2, or 3, and approximately 4,900 lots or parcels partially or wholly in areas identified as SEZ areas. Of the foregoing lots and parcels, approximately 5,650 were shown to be substantially (50% or more) within Land Capability Districts 1, 2, and/or 3, and 3,500 were shown to be substantially (50% or more) within SEZ areas (a total of 9,150 lots or parcels or 47% of the then remaining 19,300 vacant lots or parcels). The lots or parcels owned by each named Plaintiff were depicted on the Regional Plan Maps adopted as part of the 1984 Regional Plan by the Agency, and identified in the computerized data base of the Defendant TRPA, as being within either a Class 1, 2, and/or 3 Land Capabilty area, or within an area identified as a SEZ (lb area) on the TRPA Land Capability Maps, so as to be subject to the prohibitions in the 1984 Regional Plan which are at issue.

25. As to all legally-created lots or parcels of record located in so-called SEZ areas, including those specific lots or parcels owned by those named Plaintiffs identified in Paragraph 5 above and more specifically described and alleged in Appendices I and II hereto, the 1984 Regional Plan directly and specifically imposed a total and permanent prohibition on the further use or development of those parcels or lots as single-family homesites, or for any other practical or viable use, through the adoption of the following specific goals and policies set forth in the "Conservation Element" of Part I of the 1984 Regional Plan, pp. 99-102:

"GOAL #1 PROVIDE OR THE LONG-TERM PRESERVATION AND RESTORATION OF STREAM ENVIRONMENT ZONES

"The value of SEZs crosses many interests and their preservation is a means for achieving numerous environmental thresholds. Policies that promote their maintenance, protection, and restoration are listed below.

* * *

"POLICIES

* * *

"2. SEZ LANDS SHALL BE PROTECTED AND MANAGED FOR THEIR NATURAL VALUES

"SEZ lands and associated riparian vegetation are scare in the Basin relative to other plant communities. Because SEZs provide many beneficial functions (especially pertaining to water quality) *only forest management practices, stream improvement programs, and habitat restoration projects are permissible uses.**

---

* The-three permitted "uses" are, for all practical purposes, public type environmental projects of no practical use or value to the owners of private property. "Forest management practices" includes only limited thinning of dead, diseased, or old trees, but does not permit commercial timer harvesting, nor is such timber harvesting a practical use of Plaintiff's properties which are typically located in residential subdivisions and are much too small to have any commercial timber resources or potential.

* * *

"5. NEW DEVELOPMENT SHALL BE SITED OUTSIDE OF STREAM ENVIRONMENT ZONES

"To prevent further loss of naturally-functioning stream environment zones, no new development shall be permitted in stream environment zones except (1) public works projects which satisfy the conditions set forth in policies 6 and 7; (2) man-modified stream environment zones which satisfy the conditions set forth in policy 8; (3) replacement of existing coverage in conformance with policy 9; and (4) where such encroachment into stream environment zones provides the only feasible access to buildable private property for which all necessary building permits have been obtained and stream environment zone lands are restored in the amount of 1.5 times the area of stream environment zone which is disturbed or developed by the project. Site-by-site inspection shall be made for all project proposals in or near stream environment zones.

"10. DEVELOPMENT SHALL BE SET BACK FROM THE EDGE OF RIPARIAN VEGETATION

"A buffer strip outside of riparian vegetation will help protect the vegetation from disturbance. The edge between riparian zones and adjacent plant communities also is critical to the needs of many wildlife species. The TRPA shall establish standards providing for a significant

buffer around riparian vegetation contiguous to streams or other water bodies and providing for a smaller buffer or preservation policy for non-contiguous riparian vegetation." (Emphasis added.)

26. The foregoing restrictions **were** included in the **1984** Regional Plan (**and similar provisions in the 1987 Regional Plan**) allegedly to preserve and protect certain environmental resources, and thus **were intended** for the public's benefit. The practical effect of these provisions **was** to totally prohibit any new development or reasonable use of legally-created lots or parcels found to lie substantially in areas identified as so-called Stream Environment Zones. According to the **1984** Regional Plan, including the Regional Plan EIS, maps, and TRPA's computerized data base, there **were** approximately 2,900 acres in urbanized areas mapped as SEZ, and 3,500 vacant, privately-owned lots or parcels of record substantially (50% or more of the lot or parcel) within areas identified as a SEZ, including the lots or parcels owned by those named Plaintiffs identified in Paragraph 5 above, as more fully alleged in Appendices I and II hereto.

27. By virtue of the prohibitions and restrictions set forth in the **1984** Regional Plan, as alleged in Paragraph **25** above, which Defendant TRPA is mandated to enforce by the Compact, and combined with the similar prohibitions and restrictions set forth in **the predecessor interim** Ordinance No. 81-5 as alleged above, **and the comparable provisions of the successor 1987 Regional Plan as alleged below**, those named Plaintiffs identified in Paragraph 5 **(SEZ Plaintiffs) were** deprived of the entire

practical, substantial, viable, beneficial, reasonable, economic and feasible use of their properties **for the period of time specified in the pertinent Appendix applicable to each affected named Plaintiff's property**, there being no other lawful or authorized practical or reasonable use to which such properties **could** be put. Each parcel or lot owned by each named Plaintiffs has unique characteristics, including the extent of on-site damage or disturbance already existing, the distance to a watercourse, the potential for stream degradation or man-caused erosion, the extent and type of existing vegetation, and the nature of the so-called stream or watercourse. Nevertheless, the prohibitions set forth in the **1984** Regional Plan provided no meaningful exceptions, alternatives, or variance procedures **to be pursued by the named** Plaintiffs **owning lots in or containing an SEZ**, nor any means of hearing or review to pursue or exhaust to determine whether or not a proposal to build would otherwise meet the environmental goals, policies, or environmental threshold carrying capacities adopted by TRPA. Instead, the only remedy available to Plaintiffs **was** to challenge whether or not their properties **were** in fact correctly identified **by TRPA** as being substantially within a so-called Stream Environment Zone, in which case the **1984** Regional Plan imposed a irrebuttable presumption **that** prohibited any building or development of a single-family home or other structure on said properties. **Named Plaintiffs further chose not to attempt to challenge the correctness of TRPA's SEZ classifications prior to initiating this action, acknowledging that TRPA had undertaken extensive studies at great expense resulting in TRPA's SEZ classifications, and it was therefore neither likely**

that designation was in error, nor was it reasonable to place the burden on the named Plaintiffs to demonstrate that TRPA was in error in its own classifications.

28. As to all those legally-created vacant lots or parcels of record lying within so-called Land Capability Districts 1, 2, and/or 3 (a total of approximately 6,400, with approximately 5,650 situated 50% or more in said Districts 1, 2, and/or 3), including those lots or parcels owned by the named Plaintiffs identified in Paragraph 6 above and as specifically alleged in Appendices III and IV hereto, the **1984** Regional Plan directly and specifically imposed a total and permanent prohibition on the further use or development of said lots or parcels as single-family homesites, or for any other practical and viable use, **except** a very minimal exception that theoretically would **have** permited up to approximately 5% of the affected **Class 1, 2, and 3** properties in the entire Lake Tahoe Basin to qualify for the right to construct a single-family homebut which **was never implemented by TRPA**. Said permanent construction prohibition and restrictions **were** set forth in the "Soils Sub-Element" of the "Conservation Element of the Plan, Goal 1, Policy 1, pages 88-90 of the Plan, which read in pertinent part:

"POLICIES

"1. NO NEW RESIDENTIAL, TOURIST, PUBLIC SERVICE, RECREATION OR COMMERCIAL DEVELOPMENT SHALL BE PERMITTED ON LAND CAPABILITY DISTRICTS 1-3 EXCEPT AS NOTED IN THE FOLLOWING POLICY.

"Development of environmentally sensitive lands in capability classes 1, 2, and 3 will not be

permitted except as specified below. New development for purposes of this policy is development that creates additional land coverage. During this period (sic), TRPA will conduct a thorough evaluation of the environmental consequences of development in these areas, and of the options available to land owners, before deciding what policies should apply during later phases of the plan implementation. (Emphasis added.)

"A. TRPA SHALL ESTABLISH A SINGLE-FAMILY RESIDENCE EVALUATION SYSTEM OR POINT PRIORITY SYSTEM, ON OR BEFORE JANUARY 1, 1985 (GOAL #1, POLICY #2, DEVELOPMENT AND IMPLEMENTATION SUBELEMENT). ON AUGUST 1, 1985, APPLICATIONS FOR SINGLE-FAMILY DWELLINGS IN LAND CAPABILITY LEVEL 3 MAY BE ACCEPTED FOR PROCESSING, UP TO 75 LOTS IN NEVADA AND 25 LOTS IN CALIFORNIA, WHICH MAY BE APPROVED FOR CONSTRUCTION AS OF MAY 1, 1986. ON AUGUST 1, 1986, APPLICATIONS FOR SINGLE-FAMILY DWELLINGS ON LOTS MAPPED IN LAND CAPABILITIES 1-3 MAY BE ACCEPTED FOR PROCESSING, UP TO 75 LOTS IN NEVADA AND 25 IN CALIFORNIA, WHICH MAY BE APPROVED FOR CONSTRUCTION AS OF MAY 1, 1987. THIS SAME PROCEDURE WILL APPLY TO UP TO 75 LOTS IN NEVADA AND 25 LOTS IN CALIFORNIA WHICH MAY BE ACCEPTED ON

AUGUST 1, 1987 AND APPROVED FOR CONSTRUCTION AFTER MAY 1, 1988.

"IF BY JANUARY 1, 1985, NO SINGLE-FAMILY RESIDENCE EVALUATION SYSTEM HAD BEEN ESTABLISHED, AND UPON DEMONSTRATION OF CONSISTENCY WITH THE THRESHOLDS AND WATER QUALITY OBJECTIVES, THE ABOVE PROCEDURE SHALL PROCEED WITH THE STANDARDS SET FORTH IN GOAL #1, POLICY #3, OF THE DEVELOPMENT AND IMPLEMENTATION SUBELEMENT, ENTITLED: 'DEVELOPMENT CRITERIA, MARCH 1982' UNTIL A SINGLE-FAMILY RESIDENCE EVALUATION SYSTEM IS ADOPTED OR UP TO FIVE YEARS FROM ADOPTION OF THE PLAN, AT WHICH TIME THIS PROVISION WILL EXPIRE.

[Note: The foregoing "exception provisions" were never implemented by TRPA.]

Additionally, Policy 4 of Goal 2 of the "Development and Implementation Priorities" sub-element of the Implementation Element, pages 126-127, provided:

> 4. SUBJECT TO THE LIMITATIONS OF GOAL #1, POLICY #1, OF THE SOILS SUBELEMENT, THERE SHALL BE A PROHIBITION OF DEVELOPMENT ON LAND CAPABILITY CLASSES 1-3 EXCEPT THAT NO MORE THAN 100 SINGLE FAMILY UNITS (25 in California and 75 in Nevada) OF THE RESIDENTIAL ALLOCATION RECEIVING A PASSING SCORE UNDER THE EVALUATION SYSTEM FOR ANY YEAR SHALL BE FOR RESIDENTIAL PERMITS OUTSIDE OF AREAS MAPPED AS LAND CAPABILITIES 4-7. (Emphasis added)

"This provision as set forth in the Soils Sub-Element, applies only to calendar years 1986, 1987, and 1988 of the allocation system and would stop unless it is extended by consent of the Board."

[Note: Again the "exception provisions was never implemented by TRPA.]

Further, under the complicated phased priority system established under Goal #1, Policies 1-3 of the foregoing Sub-Element of the Implementation Element (pp. 121-126), only new residential development in areas having the "characteristics of Land Capability Classes 4-7", to be selected with **a future** evaluation system **that was never established by TRPA, were to be** eligible for consideration for building, with all other proposals deferred to an indeterminate time in the future, **but** no earlier than five years after the adoption of the Plan, if at all, with only the vague promise that the Defendant TRPA **would** then review and possibly amend its development prohibitions on Land Capability Class 1, 2, and 3 areas.

29. The foregoing restrictions applicable to Land Capability Class 1, 2, and 3 areas **were** included in the

1984 Regional Plan allegedly to preserve and protect certain environmental resources. The practical effect of these prohibitions **was** to totally prohibit any "new development" on the legally-created lots or parcels owned by the named Plaintiffs identified in Paragraph 6 above, as more fully alleged and set forth in Appendices III and IV hereto.

30. By virtue of **the express** prohibitions set forth in Paragraphs 28 above, which prohibitions and restrictions Defendant TRPA **was** mandated to enforce by the Compact, and combined with the similar prohibitions and restrictions set forth in **predecessor** Ordinance 81-5 **as alleged above and the comparable provisions of the successor 1987 Regional Plan alleged hereinbelow**, those Plaintiffs named in Paragraph 6 **above were** deprived of the entire practical, substantial, viable, beneficial, reasonable, economic and feasible use of their property, there being no other lawful or authorized practical or reasonable use to which such properties could be put, **commencing as of June 25, 1981, the date of adoption of the predecessor interim ordinance 81-5, and continuing for the specific period of time specified in the pertinent Appendix applicable to each named Plaintiff's property.** Further, **those** prohibitions summarily precluded Plaintiffs from receiving, and **took** from them, the benefits for which they **had** been assessed and paid in the sewage collection and disposal systems, water systems, and/or other public improvements built to serve their properties. Further, the alleged exception allowing up to 75 lots in the State of Nevada and 25 lots in the State of California in Land Capability Class 3 areas to be considered during 1985 for possible construction beginning on May 1, 1986,

and an additional 100 lots (75 lots per year in Nevada and 25 lots in California) in Land Capability Classes 1, 2, and 3 during 1987 and 1988 respectively, **even had it been implemented by TRPA which it never was**, offered such a statistically insignificant and *de minimis* chance that named Plaintiffs might qualify to use or build upon their property that it cannot be considered a viable or meaningful exception or variance to such prohibitions. Clearly such an exception gives only the bare appearance of fairness, while in fact the **1984** Regional Plan totally and permanently precluded any construction on or reasonable use of approximately 98% (not more than 75 out of approximately 3300 **were** potentially eligible for approval to build) of the remaining Class 1, 2, and 3 lawfully-created lots or parcels in the State of California portion of the Lake Tahoe Basin, including the properties owned by the Plaintiffs identified in Paragraph 6 above. Further, although the **1984** Regional Plan specified that there shall be a new "development evaluation system" created to review the extremely limited number of Class 1, 2, or 3 lots or parcels that may qualify for the "alleged exception" to the foregoing prohibitions, that new evaluation **system was never implemented by TRPA**. As a consequence **of all the foregoing**, those Plaintiffs identified in Paragraph 6 **(Class 1, 2, and 3 Plaintiffs) were** deprived of the entire practical, substantial, viable, beneficial, reasonable, economic and feasible use of their properties **for the specific periods specified in the pertinent Appendix applicable to each individual named Plaintiff is property**.

VIII. THE 1987 REGIONAL PLAN, PURCHASES BY PUBLIC BUY-OUT AGENCIES, AND OTHER FACTORS AFFECTING THE DURATION AND EXTENT OF TAKING.

31. Following adoption of the 1984 Regional Plan and the successful pursuit of a legal challenge in the Eastern District of California against that Plan leading to the issuance of a preliminary injunction on August 9, 1984, the Defendant TRPA chose to appeal that determination to the Ninth Circuit. After briefing, that appeal was heard by the Ninth Circuit and a decision rendered on July 22, 1985 upholding the district court's issuance of the preliminary injunction. (*People of California v. TRPA*, 766 F.2d 1308 (9th Cir. 1985.) Meanwhile, the instant litigation had been filed, as well as the companion case in the District Court for the District of Nevada. In spite of the pendancy [sic] of all of that litigation challenging the litigimacy of TRPA's 1984 Regional Plan on various grounds, the Defendant TRPA nevertheless chose steadfastly to defend its adopted 1984 Plan in court for many months, rather than to rescind, repeal, modify, or even reopen its 1984 Regional Plan deliberations. However, following its unsuccessful effort at the Ninth Circuit to overturn the preliminary injunction as well as the appointment of a new TRPA Executive Director, TRPA began to alter course and established a process to try to "renegotiate" its 1984 Regional Plan with interested parties. Accordingly, for a period of nearly two years following the denial by the Ninth Circuit of TRPA's appeal of the district court's preliminary injunction, TRPA pursued a

process called "consensus negotiations", that is, negotiations facilitated by a third party, dealing with a wide range of regional plan issues. The consensus negotiations were long and drawn out, given the highly complex and detailed nature of the subject. Finally, in late 1986, tentative agreements began to emerge on various elements of a revised Regional Plan, and the TRPA Governing Board then preliminarily adopted, on September 17, 1986, the initial amendments to the Goals and Policies portion of its Regional Plan. Thereafter, an extensive effort was begun to develop and recommend the content of numerous lengthy and complex implementing ordinances. Additionally, a detailed litigation settlement agreement and related proposed implementing ordinances were negotiated between the TRPA and the California Attorney General and the League to Save Lake Tahoe regarding their pending litigation, ultimately leading to approval by TRPA of Ordinance No. 87-8, followed by Ordinance 87-9 adopted on second reading on June 25, 1987. Pursuant to the terms of the latter ordinance, the effective date of the 1987 Regional Plan was established as of June 1, 1987, at which time the 1984 Regional Plan was deemed repealed. Importantly, throughout that entire process, the 1984 Regional Plan remained in full force and effect, and was the underlying policy document setting forth TRPA's policy regarding the use of named Plaintiffs' property.

32. The 1987 Regional Plan expressly continued the prohibitions in the 1984 Regional Plan on land coverage and land disturbance in SEZ areas, or in Land Capability Districts 1, 2, or 3 until such time as the new Individual Parcel Evaluation System (IPES) provided

for in the 1987 Regional Plan was implemented, which that new Plan specified was to be January 1, 1989. Thus, Policy 2, of Goal 1, of the Soils Sub-Element of the Conservation Element, specifically provided that: "NO NEW LAND COVERAGE OR OTHER PERMANENT DISTURBANCE SHALL BE PERMITTED IN LAND CAPABILITY DISTRICTS 1-3 [except for single-family dwellings ultimately approved under IPES]." Similarly, exactly like the predecessor 1984 Regional Plan, the SEZ policies of the 1987 Regional Plan also provided that SEZs could only be used for forest management practices, stream improvement programs, and habitat restoration projects, and, that "NO NEW LAND COVERAGE OR OTHER PERMANENT DISTURBANCE SHALL BE PERMITTED IN STREAM ENVIRONMENT ZONES (with very limited exceptions not applicable to construction of single-family homes)." See Policy 5, Goal 1, Stream Environment Zone Sub-Element, of the Conservation Element of the 1987 Regional Plan. Thus, the 1987 Regional Plan continued in full force and effect, and nearly word for word, the outright prohibitions on use of SEZ lots contained in the predecessor 1984 Regional Plan. As to the prohibitions on use of or construction of single-family homes in Class 1, 2, and 3 areas, the 1987 Regional Plan also carried forward, nearly word for word, the same prohibitions contained in the 1984 Regional Plan, but provided that an exception, known as the Individual Parcel Evaluation System (IPES), would be developed and implemented allegedly not later than December 31, 1988, with new single-family dwelling construction to be evaluated in accordance with that IPES system commencing on January 1,

1989. (See Policy 1, Goal 1, Development and Implementation Priorities, Implementation Element of the 1987 Regional Plan.) However, it was not until July 1, 1989 that the new IPES system was in fact fully developed and finally implemented. Thus, from the effective date of the 1987 Regional Plan (June 1, 1987) to at least July 1, 1989, the 1987 Regional Plan simply continued in full force and effect the prior provisions of the 1984 Regional Plan complained of herein prohibiting any use of Class 1, 2, or 3, or SEZ properties, without any exceptions, for that period of time. Even after July 1, 1989, when IPES became effective, the outright prohibitions on building in a SEZ remained in full force and effect, as the IPES system provided that if a lot was fully within a SEZ, it received a "O" score and continued to be ineligible to receive a building allocation. While the instant litigation primarily involves a challenge against the taking created by the provisions of the 1984 Regional Plan (and its prececessor ordinance 81-5), Plaintiffs nevertheless contend and allege that the complained-of prohibitions set forth in the 1984 Regional Plan were not terminated upon adoption of the 1987 Regional Plan, but to the contrary, were continued in full force and effect by the 1987 Regional Plan. In the case of the SEZ prohibitions, the 1987 Regional Plan continued, nearly word-for-word, the same prohibitions on use of SEZ lots, which prohibitions remain in effect today. In the case of Class 1, 2, and 3 properties, the nearly identical prohibitions found in the 1984 Regional Plan were carried forward virtually word-by-word in the 1987 Plan, at least until implementation of IPES on

July 1, 1989, six-months after the Plan's specified deadline.

33. As to the Individual Parcel Evaluation System (IPES), to the extent that that IPES program continued the prohibition on use of Class 1, 2, and 3 properties owned by named Plaintiffs in the instant litigation by giving them a score of less than "buildable", and by failing to fully implement the provisions in a timely way, and by preventing the "pass/fail" line to be lowered over a period of time as required by the 1987 Plan so that all such Class 1, 2, and 3 lots would become "buildable" as provided in the 1987 Plan, it now appears clear that the implementation of the IPES program by the Defendant TRPA has resulted in a further purposeful continuation of the prohibitions contained in the 1984 Plan as to the use of those Class 1, 2, and 3 properties receiving IPES scores by TRPA below the so-called IPES "pass-fail line". Therefore, in the case of the affected named Plaintiffs specified in the attached Appendices, it is further alleged and contended that those prohibitions on any viable use of Class 1, 2, or 3 lands created by the 1984 Regional Plan were not only continued *de facto* by the terms of the 1987 Plan until implementation of the IPES system on July 1, 1989, but as to those named Plaintiffs receiving IPEs scores of less than the so-called "passing score", those named Plaintiffs were effectively simply reclassified to ensure that the prior prohibitions on their property continued in full force and effect for a further period of time, which further period of time when combined with the prior period of prohibition created by the 1984 Plan and

ordinance 81-5, constitutes the period of the taking created by the original permanent prohibition on their property imposed by the passage and implementation of the 1984 Regional Plan, and its predecessor Ordinance 81-5. As to all named Plaintiffs affected by the terms of the 1987 Regional Plan, the specific effect of that Plan on the period of the taking involved as to each named Plaintiff is expressly set forth in the specific allegations contained in the pertinent Appendices attached hereto.

34. Further, during the pendency of this litigation, a substantial number of named Plaintiffs felt compelled, absent any other viable option, and in order to off-set and mitigate the damages they had incurred, to sell their property to one of two public buy-out programs established on the California-side of the Basin during the pendency of this litigation – either to the United States Government, Department of Agriculture, U.S. Forest Service, pursuant to the terms of the Burton-Santini Act (the Forest Service buy-out), or to the State of California, through the California Tahoe Conservancy. While those public buy-out programs were closely coordinated with TRPA in terms of the eligibility requirements for acquisition, neither program provided any compensation whatsoever for the period of taking that preceded the acquisition by the buy-out agency. Rather, appraisals were prepared to determine so-called "fair market value', as of the date of acquisition, and offers were made in reliance on those appraised prices on a "take-it-or-leave-it" basis – that is, the prices were not negotiable, but were required to be based upon those appraised values. Accordingly, as

specified in the specific allegations of the pertinent Appendices attached hereto, in almost all cases involving Forest Service or California Tahoe Conservancy acquisitions, the appraisals specifically reflected a significant discount over true fair market value, as the appraisals took into account the fact that the properties were deemed "unbuildable" pursuant to the regulatory requirements imposed by TRPA complained of herein. Again, detailed allegations as to each affected named Plaintiff are set forth in the pertinent Appendices attached hereto.

IX. CLAIMS FOR RELIEF

Based on the foregoing factual allegations, and as further alleged in the Appendices hereto, Plaintiffs seek the following relief from this Court:

FIRST (Formerly SECOND) CLAIM FOR RELIEF

(SEZ Properties – Damages for Violation of Fifth and Fourteenth Amendment Protections Against Taking Private Property Without Just Compensation)

35. Plaintiffs reallege and incorporate herein by this reference all of the allegations in Paragraphs 1 to 34 above.

36. The enactment by the Defendant TRPA of those provisions in its 1984 Regional Plan prohibiting all reasonable use of those legally-created lots or parcels within areas identified as so-called Stream Environment Zones, as set forth and alleged in greater detail in Paragraphs 25 through 27 above, coupled with the interim moratorium

enacted by the Defendant TRPA on June 25, 1981 (Ordinance 81-5) applicable to Stream Environment Zone properties and the 8-month moratorium as alleged in greater detail in Paragraphs 20 and 22 above, which were subsequently continued in full force and effect by the terms of the 1987 Regional Plan which superseded the 1984 Regional Plan, on their face have permanently, directly, and totally deprived, confiscated, and taken the private properties of each name Plaintiff identified in Paragraph 5, have deprived such Plaintiffs of all practical, viable, beneficial, reasonable and feasible use of their properties, and have made their properties virtually unmarketable and of no value to such Plaintiffs, without any compensation therefore [sic], for the specific periods of time specified in the pertinent Appendix attached hereto applicable to each named Plaintiff's property, all in the name of environmental protection and hence for public use and benefit, and therefore indirect violation of the Fifth and Fourteenth Amendments to the Constitution.

37. For the reasons set forth hereinabove, an actual controversy exists between such Plaintiffs and Defendants related to their respective legal rights and obligations. Those named Plaintiffs identified in Paragraph 5 above allege that the aforementioned provisions of the Defendant TRPA's 1984 Regional Plan applicable to privately-owned properties in SEZ areas, which made permanent the similar interim provisions set forth in TRPA's Ordinance 81-5, and which were continued in effect by TRPA even after the replacement of its 1984 Regional Plan by the comparable provisions of its 1987 Regional Plan, constitute an unconstitutional taking and confiscation of their properties in violation of the Fifth and Fourteenth

Amendments to the Constitution, and Defendants contend to the contrary. Such Plaintiffs have suffered and will continue to suffer irreparable injury as a result of Defendants' actions, and they have no other reasonable administrative remedy to pursue. Such Plaintiffs therefore seek appropriate declaratory relief determining that the actions of the Defendants complained of above constitute a taking of such Plaintiffs' private properties within the meaning of the Fifth and Fourteenth Amendments to the Constitution. Further, such Plaintiffs seek the award of just compensation as required by the Fifth and Fourteenth Amendments in an amount equal to the fair market value of such Plaintiffs' properties on the date they were totally taken for public use, which Plaintiffs allege was June 25, 1981, the date Defendants initial moratorium was imposed by its Ordinance No. 81-5, or such other amount determined to be just compensation extending from the commencement date of the taking (June 25, 1981) until the Defendant changed its regulations in a manner to permit Plaintiffs the right to build on or make reasonable use of their property, or until such time as Plaintiffs were compelled, absent any other viable option, to sell their property to a public buy-out agency. The specific circumstances and/or period of taking applicable to each affected named Plaintiff is set forth in the individual Appendix applicable to each affected named Plaintiff incorporated herein. The amount of just Compensation, with interest thereon from the date of the original taking, due to each Plaintiff shall be determined based upon the proof submitted at trial applicable to each of such named Plaintiffs' properties.

SECOND (Formerly FIFTH) CLAIM FOR RELIEF

(Class 1, 2, and 3 Properties – Damages for violation of Fifth and Fourteenth Amendment Protections Against Taking Private Property Without Just Compensation

38. Plaintiffs reallege and incorporate herein by this reference all of the allegations in Paragraphs 1 through 34 above.

39. The enactment by the Defendant TRPA of those prohibitions and restrictions contained in the amended Regional Plan permanently prohibiting any use or new development on those legally-created lots or parcels within areas identified by TRPA as so-called Land Capability Classes 1, 2, and/or 3, as alleged in greater detail in Paragraphs 28 through 30 above, coupled with the provisions of the interim moratorium enacted by the Defendant TRPA effective on June 25, 1981 and the 8-month moratorium as alleged in greater detail in Paragraphs 20 and 22 above, and continued in full force and effect by the terms of the 1987 Regional Plan which superseded the 1984 Regional Plan and interim Ordinance 81-5 as also alleged above, on their face have permanently, directly and totally deprived, confiscated, and taken the private properties of each name Plaintiff identified in Paragraph 6 above, by unreasonably and unnecessarily depriving such Plaintiffs of all of their practical, viable, beneficial, reasonable, and feasible use of their properties, and making them virtually unmarketable and of no value to such Plaintiffs, without any compensation therefore [sic], for the period of time specified in the Appendix attached hereto applicable to each affected named Plaintiff, all in the name of environmental protection and hence

allegedly for public use and benefit, and therefore in direct violation of the Fifth and Fourteenth Amendments to the Constitution.

40. For the reasons set forth above, an actual controversy exists between Plaintiffs and Defendants related to their respective legal rights and obligations. Those named Plaintiffs identified in Paragraph 6 above allege that the aforementioned provision of the 1984 Regional Plan applicable to Class 1, 2 and 3 properties, which made permanent the similar provisions set forth in TRPA's interim ordinance 81-5, and which were continued in effect by TRPA even after the replacement of the 1984 Plan by the comparable provisions of its 1987 Regional Plan, constitute an unconstitutional taking of their properties in violation of the Fifth and Fourteenth Amendments to the Constitution, and Defendants contend to the contrary. Such named Plaintiffs have and will continue to suffer irreparable injury as a result of Defendants' actions and have no other reasonable administrative remedy to pursue for the reasons set forth above. Such Plaintiffs therefore seek appropriate declaratory relief as prayed for hereafter and a judgment determining that the actions of the Defendants complained of above constitute a taking of such named Plaintiffs' private property within the meaning of the Fifth and Fourteenth Amendments of the Constitution. Further, such named Plaintiffs seek the award of just compensation as required by the Fifth and Fourteenth Amendment in an amount equal to the fair market value of such Plaintiffs' properties on the date they were totally taken for public use, which Plaintiffs allege is June 25, 1981, the date Defendant TRPA's initial moratorium was imposed by its Ordinance No. 81-5, or

such other amount determined to be just compensation extending form [sic] the commencement date of the taking (June 25, 1981) until the Defendant TRPA changed its regulations in a manner to permit named Plaintiffs the right to build on or make reasonable use of their property, or until such time as named Plaintiffs were compelled, absent any other viable option, to sell their property to a public buy-out agency. The specific circumstances and/or period of taking applicable to each affected named Plaintiff is set forth in the applicable Appendix incorporated herein. The amount of Just Compensation, with interest thereon from the date of the original taking, due to each affected named Plaintiff shall be determined based upon the proof submitted at trial applicable to each of such named Plaintiffs' properties.

THIRD (Formerly SEVENTH) CLAIM FOR RELIEF

(Violation of the Federal Civil Right's Act – 42 U.S.C. 1983 and 1985)

41. Plaintiffs reallege and incorporate herein by this reference all of the allegations in Paragraphs 1 through 40 above.

42. Defendant TRPA, acting in its official capacities and under color of State law, and in concert with the Defendant States as alleged above, by virtue of its adoption of those provisions of the **1984** Regional Plan complained of above, as well as its enactment of those interim moratoria alleged in Paragraphs 20 and 22 above, and combined with its enactment of the comparable portions of the successor 1987 Regional Plan as also alleged above,

has precluded all named Plaintiffs identified in Paragraphs 5 and 6 above from making any practical, viable, beneficial, feasible or reasonable use of their private properties **for the periods of time specified in the applicable Appendices attached hereto, and has** caused **named** Plaintiffs to be deprived of their rights and privileges secured by the Constitution, and particularly their right not be deprived of their **private** property without due process of the law and their right not to have their **private** property taken **for public use** without Just Compensation, all as more specifically alleged in the foregoing Claims for Relief. As a direct result of Defendants' actions, which actions constitute an intentional and purposeful denial of Plaintiffs' rights protected and guaranteed to them by the Constitution, each named Plaintiff has suffered substantial personal damages, in the amount to be determined based upon the proof to be submitted at trial. Accordingly, pursuant to the provisions of 42 U.S.C. 1983 and 1985(3), Plaintiffs, and each of them seek appropriate declaratory relief against Defendants **and damages against TRPA** as prayed for hereafter.

WHEREFORE, Plaintiffs pray for relief as follows:

1. On the **FIRST** CLAIM FOR RELIEF, for a determination and declaration by the Court that the prohibitions and restrictions adopted by the Defendant TRPA totally prohibiting and precluding those Plaintiffs owning properties in areas designated as SEZs from making any reasonable or practical use of their property, and prohibiting any building or development thereon, including specifically those provisions identified and set forth **above in this** Complaint, constituted an unconstitutional taking of such **named** Plaintiffs' properties within the

meaning of the Fifth and Fourteenth Amendments to the Constitution; and for an award of damages against Defendant TRPA to provide just compensation for the taking of such **named** Plaintiffs' properties in an amount to be determined upon the basis of proof submitted at trial, or before a Master or Commission as shall be appointed by the Court, plus interest thereon from the effective date of the taking, **for the period of the taking found to be applicable in the case of each named Plaintiff.**

2. On the **SECOND** CLAIM FOR RELIEF, for a determination and declaration by the Court that the prohibitions and restrictions adopted by the Defendant TRPA totally prohibiting and precluding those Plaintiffs owning properties in areas designated within Class 1, 2, and/or 3 Land Capability Districts from making any reasonable or practical use of their property, and prohibiting any building or development thereon, including specifically those provisions identified and set forth **above in this** Complaint, constitute an unconstitutional taking of such Plaintiffs' properties within the meaning of the Fifth and Fourteenth Amendments of the Constitution; and for an award of damages against Defendant TRPA to provide just compensation for the taking of such Plaintiffs' properties in an amount to be determined upon the basis of proof submitted at trial, or before a Master or commission as shall be appointed by the Court, plus interest thereon from the effective date of the taking, **for the period of the taking found to be applicable in the case of each named Plaintiff.**

3. On the THIRD CLAIM FOR RELIEF, for an order and judgment of the Court declaring that the provisions

of the **1984** Regional Plan complained of herein, as well as the **predecessor** interim moratoria alleged in Paragraphs 20 and 22 above and the **applicable provisions of the successor 1987 Regional Plan**, have caused **named** Plaintiffs to be deprived of their rights and privileges secured by the Constitution, particularly their right not to be deprived of their property without due process of law **and** their right not to have their property taken without just compensation; and for an award of damages against the Defendant TRPA to provide just compensation for the taking of the **named** Plaintiffs' properties in an amount to be determined upon the basis of proof submitted at trial, or before a Master or Commission as shall be appointed by the Court, plus interest thereon from the effective date of the taking, **for the period of the taking found to be applicable in the case of each affected Plaintiff.**

4. For costs of suit.

5. For reasonable attorneys' fees, recoverable under the provisions of 42 U.S.C. Section 1988, 42 U.S.C. Section 4654, and other applicable law.

6. For such other relief as this Court deems proper and just.

Dated: March 17, 1992

HOFFMAN, LIEN, FACCINTO,
GARNETT & LIEBERMAN

by: /s/ Lawrence L. Hoffman
Lawrence L. Hoffman,
Attorney for Plaintiffs

APPENDIX NO. I-2

PLAINTIFF CLARENCE C. BENEDICT

1. Plaintiff CLARENCE C. BENEDICT, is the **former** owner of those certain single-family residential lot commonly known as Lot Nos. 84 and 85, Alpine Peaks subdivision, described as Placer County Assessor Parcel Nos. 83-420-21 and 83-420-22 respectively, and located in the unincorporated portion of Placer County, State of California. Plaintiff CLARENCE C. BENEDICT currently resides at **8507 East Via Los Libros, Scottsdale, Arizona.** The Alpine Peaks subdivision, in which Plaintiff's lots are located, is a previously legally-approved subdivision, approximately 30% built-out in the area neighboring Plaintiff's lots, served by paved roads, sewers, water, electricity, and other utilities. Plaintiff's lots front on Courcheval Drive, a paved County road within said subdivision.

2. Plaintiff purchased said lots in 1969, and since that date timely paid all property taxes when due, and those public assessments for bonds used to fund and construct sewer and water facilities to serve said lots, including but not limited to those constructed by the Tahoe City Public Utility District and the Tahoe Truckee Sanitation Agency. **As of the date of filing this action,** comparable lots in the same neighborhood as Plaintiff's lots had a fair market value of approximately $20,000.00 if they **could** be utilized as single-family homesites. Plaintiff purchased his lots for the purpose of building a vacation home.

3. The use of Plaintiff's lots as single-family homesites **at all times relevant hereto was** permitted under

applicable zoning of the County of Placer, and Defendant TRPA's **1984 and 1987** Regional Plans designated the Alpine Peaks subdivision as a residential area allowing for new single-family residential housing, and continuation of existing residential development. Because of their location in an existing residential subdivision, the applicable local zoning, and other restrictions contained in TRPA's **1984 and 1987** Regional Plans, there **were** no other reasonable, practical, viable or feasible uses to which Plaintiff **could** put his property except for the construction of a single-family home.

4. Plaintiff's lots **were** shown on the TRPA **1984** Regional Plan Maps (Map No. A-8 attached hereto), and/or in the computerized data base of the TRPA, as being at least 25% within a Stream Environment Zone. Based upon said classification and in view of the prohibitions and restrictions contained in TRPA's **1984** Regional Plan and TRPA's Ordinance 81-5, as more particularly set forth in **the** Complaint, **Plaintiff was totally precluded from making any viable use of said property**.

5. Upon adoption of the 1987 Regional Plan, **TRPA's** prohibition on use of Plaintiff's property remained in effect until the criteria set forth in the new Individual Parcel Evaluation System (IPES) were applied to Plaintiff's property by **TRPA**. However, prior to receiving his **IPES** score, Plaintiff felt compelled to sell his property on July 1, 1988, to the United States Forest Service for the take-it-or-leave-it price of $12,000.00 per lot, there being no viable use to which he could put his property. Additionally, as a requirement of the sale to the Forest Service, Plaintiff was required to pay-off, out of the sale proceeds,

any balance due on the aforementioned assessment obligations, for which he received no possible benefit. The sale was based on a government appraised value as of the date of the sale which reflected a significant discount in value due to TRPA's restrictions on buildability and specifically excluded any compensation for the period of time from June 25, 1981 (effective date of adoption of ordinance 81-5) to July 1, 1988 (date of sale to the Forest Service), during which period Plaintiff owned his property and was totally prohibited and precluded by **TRPA** from using his property to build a single-family home, or **from** undertaking any other development or building on said real property, thereby depriving Plaintiff of substantially all reasonable and practical use of his property, making said property virtually unmarketable, **except by "forced sale" to the government**, and denying and taking all of the special benefits paid for by Plaintiff in connection with those special assessments levied against said property to pay for sewer and water improvements to serve said property.

APPENDIX NO. II-2

PLAINTIFFS LAURA L. ANDERSON AND JAMES E. ANDERSON; LINDA A. THOMPSON AND ALLAN J. THOMPSON

1. Plaintiffs LAURA L. ANDERSON and JAMES E. ANDERSON; LINDA A. THOMPSON and ALLAN J. THOMPSON are the owners of that certain single-family residential lot commonly known as Lot No. 6, Block Q,

Lakeshore Manor, described as El Dorado County Assessor Parcel No. 29-111-04, and located in the unincorporated portion of El Dorado County, State of California. The Lakeshore Manor subdivision, in which Plaintiffs' lot is located, is a previously legally-approved subdivision, served by paved roads, sewers, water, electricity, and other utilities. Plaintiffs' lot fronts on Beach Road, a paved County road within said subdivision.

2. Plaintiffs purchased said lot in 1979, and since that date timely paid all property taxes when due, and those public assessments for bonds used to fund and construct sewer and water facilities to serve said lot, including but not limited to those constructed by the South Tahoe Public Utility District. Plaintiffs purchased their lot for the purpose of building a principal residence.

3. The use of Plaintiffs' lot as a single-family homesites **at all times relevant hereto was** permitted under applicable zoning of the County of El Dorado, and Defendant TRPA's **1984 and 1987** Regional Plans designated the Lakeshore Manor subdivision as a residential area allowing for new single-family residential housing, and continuation of existing residential development. Because of its location in an existing residential subdivision, the applicable local zoning, and other restrictions contained in TRPA's **1984 and 1987** Regional Plans, there are no other reasonable, practical, viable or feasible uses to which Plaintiffs can put their property except for the construction of a single-family home.

4. Plaintiffs' lot **was** shown on the TRPA **1984** Regional Plan Maps (Map No. H-17 attached hereto),

and/or in the computerized data base of the TRPA, as being 100% within a Stream Environment Zone.

Based upon said classification and in view of the prohibitions and restrictions contained in TRPA's **1984** Regional Plan and TRPA's Ordinance 81-5, as more particularly set forth in **the** Complaint, Plaintiffs **were** prohibited and precluded **by TRPA** from using **said** property to build a single-family home, or **from** undertaking any other development or building on said real property.

5. Upon adoption of the 1987 Regional Plan, the prohibition on use of Plaintiffs' property remained in effect until the criteria set forth in the new Individual Parcel Evaluation System (IPES) were applied to Plaintiffs' property by TRPA. By letter dated February 10, 1989, Plaintiffs were advised by TRPA that it had completed the Individual Parcel Evaluation System (IPES) scoring of Plaintiffs' parcel, and that on December 21, 1988, the TRPA Governing Board had determined that lots with a score of less than 725 points were not eligible to build. Plaintiffs' IPES score of 0 points, reflecting its "SEZ" condition, therefore continued to render Plaintiffs' property "unbuildable" under the IPES system. No appeal of that IPES score was taken, as Plaintiffs did not dispute that the IPES criteria had been correctly applied to their lot, and therefore any such appeal would have been futile. As of the date of filing of this First Amended Complaint, Plaintiffs 2 continue to be prohibited from making any practical or viable use of their property by the complained-of regulations of TRPR, which were first adopted on June 25, 1981, and have prohibited any such use of said property from that date to present.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TAHOE-SIERRA PRESERVATION COUNCIL, INC., et al. Plaintiffs, v. TAHOE REGIONAL PLANNING AGENCY, et al. Defendants.	NO. CV-N-84-257-ECR NO. CV-N-92-98-ECR (Filed Aug. 6, 1998) **PRETRIAL ORDER FOR LIABILITY PHASE OF LAWSUIT (~~PROPOSED~~ JOINT ORDER)**
TAHOE-SIERRA PRESERVATION COUNCIL, INC., et al. Plaintiffs, v. TAHOE REGIONAL PLANNING AGENCY, et al. Defendants.	

FACTS – GENERAL:

48. Lake Tahoe's watershed geology, large lake volume, and limited drainage area are largely responsible for the Lake's sparse algal population and clear waters.

49. During the three periods at issue in this lawsuit (Period 1: Ordinance 81-5 [August 23, 1981 – August 26, 1983]; Period 2: Resolution 83-21 [August 27, 1983 – April 25, 1984]; and Period 3: Injunction [April 26, 1984 – July 1, 1987]), there were approximately 8,000 to 9,000 undeveloped single family lots in the Lake Tahoe Basin which were classified as

Land Capability System Class 1 through 3 lands (including Stream Environment Zone lots).

50. TRPA conducted extensive investigations before developing the environmental threshold carrying capacities ("thresholds") and the 1984 plan, with extensive public participation.

51. TRPA forcefully but unsuccessfully resisted the issuance of a Temporary Restraining Order and subsequent Preliminary Injunction in the cosolidated federal lawsuits entitled *League to Save Lake Tahoe v. TRPA* and *People v. TRPA* (East. Dist. of Calif. Case Nos. 84-0565 EJC and 84-0561 EJC).

52. From 1975 through 1996, Federal, State and local governments have authorized or appropriated over $378 million for efforts to restore and maintain Lake Tahoe's water quality (including funding to purchase environmentally sensitive lots); approximately $247 million of this is from the States of California and Nevada.

53. The California Tahoe Conservancy is a California state agency, which has expended significant monies since its inception in 1985 on programs designated to benefit water quality in the Lake Tahoe Basin. As of May 27, 1997, this has included the following approximate expenditures:

$55.7 million for the acquisition of 4,052 parcels (approximately 5,348 acres). Of this total, approximately $13 million was expended to acquire 1266 parcels (approximately 1,307 acres) during the third period of this lawsuit: April 26, 1984 – July 1, 1987;

$35.1 million in grants to local governments to fund site acquisition and construction costs of 72 erosion control projects (of this total, approximately $7.4 million was granted for 29 projects during the third period of this lawsuit);

$2.5 million in grants to fund site acquisition and construction costs of seven projects to restore Stream Environment Zones and/or watersheds.

54. The Nevada Division of State Lands is a Nevada state agency which has expended significant monies pursuant to Nevada's Tahoe Basin Act of 1986 to purchase environmentally sensitive private residential lots in the Lake Tahoe Basin in an effort to stem further degradation of Lake Tahoe. As of May 1, 1997, 496 parcels were purchased for a total cost of over $25 million.

55. From October 1, 1981 through February 19, 1997, the United States Forest Service (USFS) acquired 3,482 environmentally sensitive Lake Tahoe Basin private lots (totaling 11,482.54 acres) under its Santini-Burton Land Acquisition Program (which is authorized by Public Law 96-586, commonly called the Santini-Burton Act.) Most were acquired through purchase, at a cost of approximately $92 million; the remainder were donated. Acquisitions and expenditures during the three periods of this lawsuit were as follows:

Period 1 (August 23, 1981 – August 26, 1983):

California – 215 parcels acquired for $4,156,500

Nevada – 45 parcels acquired for $1,776,500

Period 2 (August 27, 1983 – April 25, 1984):

California – 167 parcels acquired for $4,871,800

Nevada – 27 parcels acquired for $1,126,000

Period 3 (April 26, 1984 – July 1, 1987):

California – 896 parcels acquired for $12,738,425

Nevada – 394 parcels acquired for $13,171,143

56. From October 1, 1983, through September 30, 1995, the USFS allocated over $16 million to local governments for erosion control projects designed to benefit Lake Tahoe's water quality. These included the following allocations: Fiscal Year (FY)[2] 1984: $2,717,346; FY 1985: $1,410,920; FY 1986: $1,325,943; FY 1987: 1,191,538.

57. Between 1981 and 1984, some owners of South Lake Tahoe lots in land capability districts 1, 2 and 3 (including Stream Environment zones) were able to, and some did, sell sewer and building allocations to owners of higher-capability lots. Some allocations sold for between $15,000 and $30,000.

58. Some parcels in this lawsuit were owned by plaintiffs who owned more than one lot within the Tahoe region.

* * *

DANIEL E. LUNGREN, Attorney General
of the State of California
RICHARD M. FRANK (CSB 63482)
Senior Assistant Attorney General
DANIEL L. SIEGEL (CSB 67536)
Supervising Deputy Attorney General
MARY J. SCOONOVER (CSB 131259)
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 92444-2550
Telephone: (916) 327-7880
Attorneys for Defendant State of California

FRANKIE SUE DEL PAPA, Attorney General
of the State of Nevada
WILLIAM J. FREY (NV State Bar No. 4266)
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-7321
Telephone: (702) 687-7321
Attorneys for Defendant State of Nevada

LAWRENCE L. HOFFMAN (CSB 40204)
HOFFMAN LAW OFFICES
3000 No. Lake Boulevard
P.O. Box 7740
Tahoe City, CA 96145
Telephone: (702) 831-8542
(530) 583-8542
Attorneys for Plaintiffs

(Additional Attorneys for Defendants listed on the following page.)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TAHOE-SIERRA PRESERVATION COUNCIL, INC., et al. Plaintiffs, v. TAHOE REGIONAL PLANNING AGENCY, et al., Defendants.	**NO. CV-N-84-257-ECR-(PHA)** **NO. CV-N-92-98-ECR-(PHA)** (Filed Sep. 9, 1998)
TAHOE-SIERRA PRESERVATION COUNCIL, INC., et al., Plaintiffs, v. TAHOE REGIONAL PLANNING AGENCY, et al., Defendants.	**STIPULATION NOT TO INTRODUCE EVIDENCE REGARDING INDIVIDUAL PLAINTIFFS; ORDER** Hearing Date: Sept. 10, 1998 Hearing Time: 2:00 p.m. Courtroom: 1

SUSAN E. SCHOLLEY (NV State Bar No. 531)
Tahoe Regional Planning Agency
P.O. Box 1038
Zephyr Cove, NV 89448
Telephone: (702) 588-4547
Fax: (702) 588-4527
Attorney for Defendant, Tahoe Regional Planning Agency

E. CLEMENT SHUTE, JR. (CA State Bar No. 36592)
ELLISON FOLK (CA Stare [sic] Bar No. 149232)
SHUTE, MIHALY & WEINBERGER
396 Hayes Street
San Francisco, CA 94102
Telephone: (415) 552-7272
Attorneys for Defendant, Tahoe Regional
Planning Agency

J. THOMAS SUSICH, (NV Bar No. 898)
CROWELL, SUSICH, OWEN & TACKES, LTD.
510 W. Fourth Street
P.O. Box 1000
Carson City, NV 89710
Telephone: (702) 882-1311
Attorneys for Defendant, Tahoe Regional
Planning Agency

It is hereby stipulated between the parties that since this lawsuit consists of a facial, as opposed to an as applied, inverse condemnation challenge of Tahoe Regional Planning Agency development restrictions, the parties will not introduce evidence regarding the specific factual situations of individual plaintiffs during the liability phase of this lawsuit. As part of this stipulation, the parties agree that, during the liability phase of this lawsuit:

1. No plaintiff depositions shall be offered as previously listed in the Pretrial Order (p. 40, lines 12-28; pp. 41-45); and

2. No plaintiff shall be called as a witness as previously designated in the Pretrial Order (Exhibit D, p. 1, lines 22-28; p. 2).

Each party shall bear its own fees and costs in this matter.

The parties respectfully request that the Pretrial Order (p. 40, lines 12-28; pp. 41-45; and Exhibit D, p. 1, lines 22-28; p. 2) be modified to reflect this stipulation.

Dated: 9/2/98

DANIEL E. LUNGREN, Attorney General
of the State of California
RICHARD M. FRANK, Sr. Assistant
Attorney General

/s/ Daniel L. Siegel
DANIEL L. SIEGEL, Supervising
Deputy Attorney General
MARY J. SCOONOVER
Deputy Attorney General
Attorneys for Defendant,
State of California
On behalf of all Defendants

FRANKIE SUE DEL PAPA,
Attorney General
for the State of Nevada
WILLIAM FREY
Deputy Attorney General
Attorneys for Defendant,
State of Nevada

TAHOE REGIONAL
PLANNING AGENCY
SUSAN E. SCHOLLEY
Attorney for Tahoe Regional
Planning Agency

SHUTE, MIHALY &
WEINBERGER
E. CLEMENT SHUTE, JR.
Attorneys for Tahoe Regional
Planning Agency

CROWELL, SUSICH, OWEN &
TACKES, LTD.
J. THOMAS SUSICH
Attorneys for Tahoe Regional
Planning Agency

Dated: 9/4/98

HOFFMAN LAW OFFICES

/s/ Lawrence Hoffman
LAWRENCE HOFFMAN
Attorneys for Plaintiffs

IT IS SO ORDERED:

Dated: Sept. 9, 1998

/s/ Edward C. Reed
JUDGE OF THE UNITED STATES
DISTRICT COURT,
DISTRICT OF NEVADA

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PLAINTIFFS' EXHIBIT 1

PUBLIC LAW 96-551 – DEC. 19, 1980
Public Law 96-551
96th Congress

An Act

To grant the consent of the Congress to the Tahoe Regional Planning Compact, and to authorize the Secretary of Agriculture and others to cooperate with the planning agency thereby created.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to encourage the wise use and conservation of the waters of Lake Tahoe and of the resources of the area around said lake, the consent of the Congress is hereby given to the Tahoe Regional Planning Compact heretofore adopted by the States of California and Nevada, which compact reads as follows:

TAHOE REGIONAL PLANNING COMPACT

ARTICLE I. – FINDINGS AND DECLARATIONS OF POLICY

(a) It is found and declared that:

(1) The waters of Lake Tahoe and other resources of the region are threatened with deterioration or degeneration, which endangers the natural beauty and economic productivity of the region.

(2) The public and private interests and investments in the region are substantial.

(3) The region exhibits unique environmental and ecological values which are irreplaceable.

(4) By virtue of the special conditions and circumstances of the region's natural ecology, developmental pattern, population distribution and human needs, the region is experiencing problems of resource use and deficiencies of environmental control.

(5) Increasing urbanization is threatening the ecological values of the region and threatening the public opportunities for use of the public lands.

(6) Maintenance of the social and economic health of the region depends on maintaining the significant scenic, recreational, educational, scientific, natural and public health values provided by the Lake Tahoe Basin.

(7) There is a public interest in protecting, preserving and enhancing these values for the residents of the region and for visitors to the region.

(8) Responsibilities for providing recreational and scientific opportunities, preserving scenic and natural areas, and safeguarding the public who live, work and play in or visit the region are divided among local governments, regional agencies, the States of California and Nevada, and the Federal Government.

(9) In recognition of the public investment and multistate and national significance of the recreational values, the Federal Government has an interest in the acquisition of recreational property and the management of resources in the region to preserve environmental and recreational values, and the Federal Government should assist the States in fulfilling their responsibilities.

(10) In order to preserve the scenic beauty and outdoor recreational opportunities of the region, there is a need to insure an equilibrium between the

region's natural endowment and its manmade environment.

(b) In order to enhance the efficiency and governmental effectiveness of the region, it is imperative that there be established a Tahoe Regional Planning Agency with the powers conferred by this compact including the power to establish environmental threshold carrying capacities and to adopt and enforce a regional plan and implementing ordinances which will achieve and maintain such capacities while providing opportunities for orderly growth and development consistent with such capacities.

(c) The Tahoe Regional Planning Agency shall interpret and administer its plans, ordinances, rules and regulations in accordance with the provisions of this compact.

Article II. – Definitions

As used in this compact:

(a) "Region," includes Lake Tahoe, the adjacent parts of Douglas and Washoe Counties and Carson City, which for the purposes of this compact shall be deemed a county, lying within the Tahoe Basin in the State of Nevada, and the adjacent parts of the counties of Placer and El Dorado lying within the Tahoe Basin in the State of California, and that additional and adjacent part of the county of Placer outside of the Tahoe Basin in the State of California which lies southward and eastward of a line starting at the intersection of the basin crestline and the north boundary of section 1, thence west to the northwest corner of section 3, thence south to the intersection of the basin crestline and the west boundary of section 10; all

sections referring to township 15 north, range 16 east, M.D.B. & M. The region defined and described herein shall be as precisely delineated on official maps of the agency.

(b) "Agency" means the Tahoe Regional Planning Agency.

(c) "Governing body" means the governing board of the Tahoe Regional Planning Agency.

(d) "Regional plan" means the long-term general plan for the development of the region.

(e) "Planning commission" means the advisory planning commission appointed pursuant to subdivision (h) of article III.

(f) "Gaming" means to deal, operate, carry on, conduct, maintain or expose for play any banking or percentage game played with cards, dice or any mechanical device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fantan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, stud poker, draw poker or slot machine, but does not include social games played solely for drinks, or cigars or cigarettes served individually, games played in private homes or residences for prizes or games operated by charitable or educational organizations, to the extent excluded by applicable State law.

(g) "Restricted gaming license" means a license to operate not more than 15 slot machines on which a quarterly fee is charged pursuant to NRS 463.373 and no other games.

(h) "Project" means an activity undertaken by any person, including any public agency, if the activity may substantially affect the land, water, air, space or any other natural resources of the region.

(i) "Environmental threshold carrying capacity" means an environmental standard necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the region or to maintain public health and safety within the region. Such standards shall include but not be limited to standards for air quality, water quality, soil conservation, vegetation preservation and noise.

(j) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

(k) "Areas open to public use" means all of the areas within a structure housing gaming under a nonrestricted license except areas devoted to the private use of guests.

(l) "Areas devoted to private use of guests" means hotel rooms and hallways to serve hotel room areas, and any parking areas. A hallway serves hotel room areas if more than 50 percent of the areas on each side of the hallway are hotel rooms.

(m) "Nonrestricted license" means a gaming license which is not a restricted gaming license.

ARTICLE III. – ORGANIZATION

(a) There is created the Tahoe Regional Planning Agency as a separate legal entity.

The governing body of the agency shall be constituted as follows:

(1) California delegation:

(A) One member appointed by each of the county boards of supervisors of the counties of El Dorado and Placer and one member appointed by the city council of the city of South Lake Tahoe. Any such member may be a member of the county board of supervisors or city council, respectively, and shall reside in the territorial jurisdiction of the governmental body making the appointment.

(B) Two members appointed by the Governor of California, one member appointed by the speaker of the assembly of California and one member appointed by the senate rules committee of the State of California. The members appointed pursuant to this subparagraph shall not be residents of the region and shall represent the public at large within the State of California.

(2) Nevada delegation:

(A) One member appointed by each of the boards of county commissioners of Douglas and Washoe Counties and one member appointed by the board of supervisors of Carson City. Any such member may be a member of the board of

county commissioners or board of supervisors, respectively, and shall reside in the territorial jurisdiction of the governmental body making the appointment.

(B) One member appointed by the Governor of Nevada, the secretary of State of Nevada or his designee, and the director of the State department of conservation and natural resources of Nevada or his designee. Except for the secretary of State and the director of the State department of conservation and natural resources, the members or designees appointed pursuant to this subparagraph shall not be residents of the region. All members appointed pursuant to this subparagraph shall represent the public at large within the State of Nevada.

(C) One member appointed for a 1-year term by the six other members of the Nevada delegation. If at least four members of the Nevada delegation are unable to agree upon the selection of a seventh member within 60 days after the effective date of the amendments to this compact or the occurrence of a vacancy on the governing body for that State the Governor of the State of Nevada shall make such an appointment. The member appointed pursuant to this subparagraph may, but is not required to, be a resident of the region within the State of Nevada.

(3) If any appointing authority under paragraph (1)(A), (1)(B), (2)(A), or (2)(B) fails to make such an appointment within 60 days after the effective date of the amendments to this compact or the occurrence of a vacancy on the governing body, the Governor of the State in which the appointing authority is located shall make the appointment. The term of any member so appointed shall be 1 year.

(4) The position of any member of the governing body shall be deemed vacant if such a member is absent from three consecutive meetings of the governing body in any calendar year.

(5) Each member and employee of the agency shall disclose his economic interests in the region within 10 days after taking his seat on the governing board or being employed by the agency and shall thereafter disclose any further economic interest which he acquires, as soon as feasible after he acquires it. As used in this paragraph, "economic interests" means:

(A) Any business entity operating in the region in which the member or employee has a direct or indirect investment worth more than $1,000.

(B) Any real property located in the region in which the member or employee has a direct or indirect interest worth more than $1,000.

(C) Any source of income attributable to activities in the region, other than loans by or deposits with a commercial lending institution in the regular course of business, aggregating $250 or more in value received by or promised to the member within the preceding 12 months; or

(D) Any business entity operating in the region in which the member or employee is a director, officer, partner, trustee, employee or holds any position of management.

No member or employee of the agency shall make, or attempt to influence, an agency decision in which he knows or has reason to know he has an economic interest. Members and employees of the agency must disqualify themselves from making or participating in the

making of the agency when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the economic interests of the member or employee.

(b) The members of the agency shall serve without compensation, but the expenses of each member shall be met by the body which he represents in accordance with the law of that body. All other expenses incurred by the governing body in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided, shall be paid by the agency out of its own funds.

(c) Except for the secretary of State and director of the State department of conservation and natural resources of Nevada and the member appointed pursuant to subdivision (a)(2)(C), the members of the governing body serve at the pleasure of the appointing authority in each case, but each appointment shall be reviewed no less often than every 4 years. Members may be reappointed.

(d) The governing body of the agency shall meet at least monthly. All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held. The governing body shall fix a date for its regular monthly meeting in such terms as "the first Monday of each month," and shall not change such date more often than once in any calendar year. Notice of the date so fixed shall be given by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each

county a portion of whose territory lies within the region. Notice of any special meeting, except an emergency meeting, shall be given by so publishing the date and place and posting an agenda at least 5 days prior to the meeting.

(e) The position of a member of the governing body shall be considered vacated upon his loss of any of the qualifications required for his appointment and in such event the appointing authority shall appoint a successor.

(f) The governing body shall elect from its own members a chairman and vice chairman, whose terms of office shall be 2 years, and who may be reelected. If a vacancy occurs in either office, the governing body may fill such vacancy for the unexpired term.

(g) Four of the members of the governing body from each State constitute a quorum for the transaction of the business of the agency. The voting procedure shall be as follows:

(1) For adopting, amending or repealing environmental threshold carrying capacities, the regional plan, and ordinance, rules, and regulations, and for granting variances from the ordinances, rules and regulations, the vote of at least four of the members of each State agreeing with the vote of at least four members of the other State shall be required to take action. If there is no vote of at least four of the members from one State agreeing with the vote of at least four of the members of the other State on the actions specified in this paragraph, an action of rejection shall be deemed to have been taken.

(2) For approving a project, the affirmative vote of at least five members from the State in which the

project is located and the affirmative vote of at least nine members of the governing body are required. If at least five members of the governing body from the State in which the project is located and at least nine members of the entire governing body do not vote in favor of the project, upon a motion for approval, an action of rejection shall be deemed to have been taken. A decision by the agency to approve a project shall be supported by a statement of findings, adopted by the agency, which indicates that the project complies with the regional plan and with applicable ordinances, rules and regulations of the agency.

(3) For routine business and for directing the agency's staff on litigation and enforcement actions, at least eight members of the governing body must agree to take action. If at least eight votes in favor of such action are not cast, an action of rejection shall be deemed to have been taken. Whenever under the provisions of this compact or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any project, public or private, the agency shall take final action by vote, whether to approve, to require modification or to reject such project, within 180 days after the application for such project is accepted as complete by the agency in compliance with the agency's rules and regulations governing such delivery unless the applicant has agreed to an extension of this time limit. If a final action by vote does not take place within 180 days, the applicant may bring an action in a court of competent jurisdiction to compel a vote unless he has agreed to an extension. This provision does not limit the right of any person to obtain judicial review of agency action under subdivision (h) of article VI. The vote of each member of the governing body shall be individually recorded. The governing body shall adopt its own rules, regulations and procedures.

(h) An advisory planning commission shall be appointed by the agency. The commission shall include: The chief planning officers of Placer County, El Dorado County, and the city of South Lake Tahoe in California and of Douglas County, Washoe County and Carson City in Nevada, the executive officer of the Lahontan Regional Water Quality Control Board of the State of California, the executive officer of the Air Resources Board of the State of California, the director of the State department of conservation and natural resources of the State of Nevada, the administrator of the division of environmental protection in the State department of conservation and natural resources of the State of Nevada, the administrator of the Lake Tahoe Management Unit of the United States Forest Service, and at least four lay members with an equal number from each State, at least half of whom shall be residents of the region. Any official member may designate an alternate.

The term of office of each lay member of the advisory planning commission shall be 2 years. Members may be reappointed.

The position of each member of the advisory planning commission shall be considered vacated upon loss of any of the qualifications required for appointments, and in such event the appointing authority shall appoint a successor.

The advisory planning commission shall elect from its own members a chairman and a vice chairman, whose terms of office shall be 2 years and who may be reelected. If a vacancy occurs in either office, the advisory planning

commission shall fill such vacancy for the unexpired term.

A majority of the members of the advisory planning commission constitutes a quorum for the transaction of the business of the commission. A majority vote of the quorum present shall be required to take action with respect to any matter.

(i) The agency shall establish and maintain an office within the region, and for this purpose the agency may rent or own property and equipment. Every plan, ordinance and other record of the agency which is of such nature as to constitute a public record under the law of either the State of California or the State of Nevada shall be open to inspection and copying during regular office hours.

(j) Each authority charged under this compact or by the law of either State with the duty of appointing a member of the governing body of the agency shall by certified copy of its resolution or other action notify the Secretary of State of its own State of the action taken.

Article IV. – Personnel

(a) The governing body shall determine the qualification of, and it shall appoint and fix the salary of, the executive officer of the agency, and shall employ such other staff and legal counsel as may be necessary to execute the powers and functions provided for under this compact or in accordance with any intergovernmental contracts or agreements the agency may be responsible for administering

(b) Agency personnel standards and regulations shall conform insofar as possible to the regulations and procedures of the civil service of the State of California or the State of Nevada, as may be determined by the governing body of the agency; and shall be regional and bistate in application and effect; provided that the governing body may, for administrative convenience and at its discretion, assign the administration of designated personnel arrangements to an agency of either State, and provided that administratively convenient adjustments be made in the standards and regulations governing personnel assigned under intergovernmental agreements.

(c) The agency may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford employees of the agency terms and conditions of employment similar to those enjoyed by employees of California and Nevada generally.

Article V. – Planning

(1) In preparing each of the plans required by this article and each amendment thereto, if any, subsequent to its adoption, the planning commission after due notice shall hold at least one public hearing which may be continued from time to time, and shall review the testimony and any written recommendations presented at such hearing before recommending the plan or amendment. The notice required by this subdivision shall be given at least 20 days prior to the public hearing by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout

the region and in each county a portion of whose territory lies within the region.

The planning commission shall then recommend such plan or amendment to the governing body for adoption by ordinance. The governing body may adopt, modify or reject the proposed plan or amendment, or may initiate and adopt a plan or amendment without referring it to the planning commission. If the governing body initiates or substantially modifies a plan or amendment, it shall hold at least one public hearing thereon after due notice as required in this subdivision.

If a request is made for the amendment of the regional plan by:

(1) A political subdivision a part of whose territory would be affected by such amendment; or

(2) The owner or lessee of real property which would be affected by such amendment,

the governing body shall complete its action on such amendment within 180 days after such request is accepted as complete according to standards which must be prescribed by ordinance of the agency.

(b) The agency shall develop, in cooperation with the States of California and Nevada, environmental threshold carrying capacities for the region. The agency should request the President's Council on Environmental Quality, the U.S. Forest Service and other appropriate agencies to assist in developing such environmental threshold carrying capacities. Within 18 months after the effective date of the amendments to this compact, the

agency shall adopt environmental threshold carrying capacities for the region.

(c) Within 1 year after the adoption of the environmental threshold carrying capacities for the region, the agency shall amend the regional plan so that, at a minimum, the plan and all of its elements, as implemented through agency ordinances, rules and regulations, achieves and maintains the adopted environmental threshold carrying capacities. Each element of the plan shall contain implementation provisions and time schedules for such implementation by ordinance. The planning commission and governing body shall continuously review and maintain the regional plan. The regional plan shall consist of a diagram, or diagrams, and text, or texts setting forth the projects and proposals for implementation of the regional plan, a description of the needs and goals of the region and a statement of the policies, standards and elements of the regional plan.

The regional plan shall be a single enforceable plan and includes all of the following correlated elements:

(1) A land-use plan for the integrated arrangement and general location and extent of, and the criteria and standards for, the uses of land, water, air, space and other natural resources within the region, including but not limited to an indication or allocation of maximum population densities and permitted uses.

(2) A transportation plan for the integrated development of a regional system of transportation, including but not limited to parkways, highways, transportation facilities, transit routes, waterways, navigation facilities, public transportation facilities,

bicycle facilities, and appurtenant terminals and facilities for the movement of people and goods within the region. The goal of transportation planning shall be:

(A) To reduce dependency on the automobile by making more effective use of existing transportation modes and of public transit to move people and goods within the region; and

(B) To reduce to the extent feasible air pollution which is caused by motor vehicles.

Where increases in capacity are required, the agency shall give preference to providing such capacity through public transportation and public programs and projects related to transportation. The agency shall review and consider all existing transportation plans in preparing its regional transportation plan pursuant to this paragraph.

The plan shall provide for an appropriate transit system for the region.

The plan shall give consideration to:

(A) Completion of the Loop Road in the States of Nevada and California;

(B) Utilization of a light rail mass transit system in the South Shore area; and

(C) Utilization of a transit terminal in the Kingsbury Grade area.

Until the regional plan is revised, or a new transportation plan is adopted in accordance with this paragraph, the agency has no effective transportation plan.

(3) A conservation plan for the preservation, development, utilization, and management of the

scenic and other natural resources within the basin, including but not limited to, soils, shoreline and submerged lands, scenic corridors along transportation routes, open spaces, recreational and historical facilities.

(4) A recreational plan for the development, utilization, and management of the recreational resources of the region, including but not limited to, wilderness and forested lands, parks and parkways, riding and hiking trails, beaches and playgrounds, marinas, areas for skiing and other recreational facilities.

(5) A public services and facilities plan for the general location, scale and provision of public services and facilities, which, by the nature of their function, size, extent and other characteristics are necessary or appropriate for inclusion in the regional plan.

In formulating and maintaining the regional plan, the planning commission and governing body shall take account of and shall seek to harmonize the needs of the region as a whole, the plans of the counties and cities within the region, the plans and planning activities of the State, Federal and other public agencies and nongovernmental agencies and organizations which affect or are concerned with planning and development within the region.

(d) The regional plan shall provide for attaining and maintaining Federal State, or local air and water quality standards, whichever are strictest, in the respective portions of the region for which the standards are applicable.

The agency may, however, adopt air or water quality standards or control measures more stringent than the applicable State implementation plan or the applicable

Federal State, or local standards for the region, if it finds that such additional standards or control measures are necessary to achieve the purposes of this compact. Each element of the regional plan, where applicable, shall, by ordinance, identify the means and time schedule by which air and water quality standards will be attained.

(e) Except for the Regional Transportation Plan of the California Tahoe Regional Planning Agency, the regional plan, ordinances, rules and regulations adopted by the California Tahoe Regional Planning Agency in effect on July 1, 1980, shall be the regional plan, ordinances, rules and regulations of the Tahoe Regional Planning Agency for that portion of the Tahoe region located in the State of California. Such plan, ordinance, rule or regulation may be amended or repealed by the governing body of the agency. The plans, ordinances, rules and regulations of the Tahoe Regional Planning Agency that do not conflict with, or are not addressed by, the California Tahoe Regional Planning Agency's plans, ordinances, rules and regulations referred to in this subdivision shall continue to be applicable unless amended or repealed by the governing body of the agency. No provision of the regional plan, ordinances, rules and regulations of the California Tahoe Regional Planning Agency referred to in this subdivision shall apply to that portion of the region within the State of Nevada, unless such provision is adopted for the Nevada portion of the region by the governing body of the agency.

(f) The regional plan, ordinances, rules and regulations of the Tahoe Regional Planning Agency apply to that portion of the region within the State of Nevada.

(g) The agency shall adopt ordinances prescribing specific written findings that the agency must make prior to approving any project in the region. These findings shall relate to environmental protection and shall insure that the project under review will not adversely affect implementation of the regional plan and will not cause the adopted environmental threshold carrying capacities of the region to be exceeded.

(h) The agency shall maintain the data, maps and other information developed in the course of formulating and administering the regional plan, in a form suitable to assure a consistent view of developmental trends and other relevant information for the availability of a use by other agencies of government and by private organizations and individuals concerned.

(i) Where necessary for the realization of the regional plan, the agency may engage in collaborative planning with local governmental jurisdictions located outside the region, but contiguous to its boundaries. In formulating and implementing the regional plan, the agency shall seek the cooperation and consider the recommendations of counties and cities and other agencies of local government, of State and Federal agencies, of educational institutions and research organizations, whether public or private, and of civic groups and private persons.

Article VI. – Agency's Powers

(a) The governing body shall adopt all necessary ordinances, rules, and regulations to effectuate the adopted regional plan. Except as otherwise provided in this compact, every such ordinance, rule or regulation shall establish a minimum standard applicable throughout the region. Any political subdivision or public agency may adopt and enforce an equal or higher requirement applicable to the same subject of regulation in its territory. The regulations of the agency shall contain standards including but not limited to the following: Water purity and clarity; subdivision; zoning; tree removal; solid waste disposal; sewage disposal; land fills, excavations, cuts and grading; piers, harbors, breakwaters or channels and other shoreline developments; waste disposal in shoreline areas; waste disposal from boats; mobile-home parks; house relocation; outdoor advertising; flood plain protection; soil and sedimentation control; air pollution; and watershed protection. Whenever possible without diminishing the effectiveness of the regional plan, the ordinances, rules, regulations and policies shall be confined to matters which are general and regional in application, leaving to the jurisdiction of the respective States, counties and cities the enactment of specific and local ordinances, rules, regulations and policies which conform to the regional plan.

The agency shall prescribe by ordinance those activities which it has determined will not have substantial effect on the land, water, air, space or any other natural resources in the region and therefore will be exempt from its review and approval.

Every ordinance adopted by the agency shall be published at least once by title in a newspaper or combination of newspapers whose circulation is general throughout the region. Except an ordinance adopting or amending the regional plan, no ordinance shall become effective until 60 days after its adoption. Immediately after its adoption, a copy of each ordinance shall be transmitted to the governing body of each political subdivision having territory within the region.

(b) No project other than those to be reviewed and approved under the special provisions of subdivisions (d), (e), (f) and (g) may be developed in the region without obtaining the review and approval of the agency and no project may be approved unless it is found to comply with the regional plan and with the ordinances, rules and regulations enacted pursuant to subdivision (a) to effectuate that plan. The agency may approve a project in the region only after making the written findings required by this subdivision or subdivision (g) of article V. Such findings shall be based on substantial evidence in the record.

Before adoption by the agency of the ordinances required in subdivision (g) of article V, the agency may approve a project in the region only after making written findings on the basis of substantial evidence in the record that the project is consistent with the regional plan then in effect and with applicable plans, ordinances, regulations, and standards of Federal and State agencies relating to the protection, maintenance and enhancement of environmental quality in the region.

(c) The legislatures of the States of California and Nevada find that in order to make effective the regional

plan as revised by the agency, it is necessary to halt temporarily works of development in the region which might otherwise absorb the entire capability of the region for further development or direct it out of harmony with the ultimate plan. Subject to the limitation provided in this subdivision, from the effective date of the amendments to this compact until the regional plan is amended pursuant to subdivision (c) of article V, or until May 1, 1983, whichever is earlier:

(1) Except as otherwise provided in this paragraph, no new subdivision, planned unit development, or condominium project may be approved unless a complete tentative map or plan has been approved before the effective date of the amendments to this compact by all agencies having jurisdiction. The subdivision of land owned by a general improvement district, which existed and owned the land before the effective date of the amendments to this compact, may be approved if subdivision of the land is necessary to avoid insolvency of the district.

(2) Except as provided in paragraph (3), no apartment building may be erected unless the required permits for such building have been secured from all agencies having jurisdiction, prior to the effective date of the amendments to this compact.

(3) During each of the calendar years 1980, 1981 and 1982, no city or county may issue building permits which authorize the construction of a greater number of new residential units within the region than were authorized within the region by building permits issued by that city or county during the calendar year 1978. For the period of January through April, 1983, building permits authorizing the construction of no more than one-third of that number

may be issued by each such city or county. For purposes of this paragraph a "residential unit" means either a single family residence or an individual residential unit within a larger building, such as an apartment building, a duplex or a condominium.

The legislatures find the respective numbers of residential units authorized within the region during the calendar year 1978 to be as follows:

1. City of South Lake Tahoe and El Dorado County (combined)	252
2. Placer County	278
3. Carson City	0
4. Douglas County	339
5. Washoe County	739

(4) During each of the calendar years 1980, 1981 and 1982, no city or county may issue building permits which authorize construction of a greater square footage of new commercial buildings within the region than were authorized within the region by building permits for commercial purposes issued by that city or county during the calendar year 1978. For the period of January through April, 1983, building permits authorizing the construction of no more than one-third the amount of that square footage may be issued by each such city or county.

The legislatures find the respective square footages of commercial buildings authorized within the region during calendar year 1978 to be as follows:

1. City of South Lake Tahoe and El Dorado County (combined)	64,324
2. Placer County	23,000
3. Carson City	0
4. Douglas County	57,354
5. Washoe County	50,600

(5) No structure may be erected to house gaming under a nonrestricted license.

(6) No facility for the treatment of sewage may be constructed or enlarged except:

(A) To comply, as ordered by the appropriate State agency for the control of water pollution, with existing limitations of effluent under the Clean Water Act, 33 U.S.C. § 1251 et seq., and the applicable State law for control of water pollution;

(B) To accommodate development which is not prohibited or limited by this subdivision; or

(C) In the case of Douglas County Sewer District #1, to modify or otherwise alter sewage treatment facilities existing on the effective date of the amendments to this compact so that such facilities will be able to treat the total volume of effluent for which they were originally designed, which is 3.0 million gallons per day. Such modification or alteration is not a "project"; is not subject to the requirements of article VII; and does not require a permit from the agency. Before commencing such modification or alteration, however, the district shall submit to the agency its report identifying any significant soil erosion problems which may be caused by such modifications or alterations and the measures which the district proposes to take to mitigate or avoid such problems.

The moratorium imposed by this subdivision does not apply to work done pursuant to a right vested before the effective date of the amendments to this compact. Notwithstanding the expiration date of the moratorium imposed by this subdivision, no new highway may be

built or existing highway widened to accommodate additional continuous lanes for automobiles until the regional transportation plan is revised and adopted.

The moratorium imposed by this subdivision does not apply to the construction of any parking garage which has been approved by the agency prior to May 4, 1979, whether that approval was affirmative or by default. The provisions of this paragraph are not an expression of legislative intent that any such parking garage, the approval of which is the subject of litigation which was pending on the effective ate of the amendments to this compact, should or should not be constructed. The provisions of this paragraph are intended solely to permit construction of such a parking garage if a judgment sustaining the agency's approval to construct that parking garage has become final and no appeal is pending or may lawfully be taken to a higher court.

(d) Subject to the final order of any court of competent jurisdiction entered in litigation contesting the validity of an approval by the Tahoe Regional Planning Agency, whether that approval was affirmative or by default, if that litigation was pending on May 4, 1979, the agency and the States of California and Nevada shall recognize as a permitted and conforming use:

(1) Every structure housing gaming under a nonrestricted license which existed as a licensed gaming establishment on May 4, 1979, or whose construction was approved by the Tahoe Regional Planning Agency affirmatively or deemed approved before that date. The construction or use of any structure to house gaming under a nonrestricted license not so existing or approved, or the enlargement in

cubic volume of any such existing or approved structure is prohibited.

(2) Every other nonrestricted gaming establishment whose use was seasonal and whose license was issued before May 4, 1979, for the same season and for the number and type of games and slot machines on which taxes or fees were paid in the calendar year 1978.

(3) Gaming conducted pursuant to a restricted gaming license issued before May 4, 1979, to the extent permitted by that license on that date.

The area within any structure housing gaming under a nonrestricted license which may be open to public use (as distinct from that devoted to the private use of guests and exclusive of any parking area) is limited to the area existing or approved for public use on May 4, 1979. Within these limits, any external modification of the structure which requires a permit from a local government also requires approval from the agency. The agency shall not permit restaurants, convention facilities, showrooms or other public areas to be constructed elsewhere in the region outside the structure in order to replace areas existing or approved for public use on May 4, 1979.

(e) Any structure housing licensed gaming may be rebuilt or replaced to a size not to exceed the cubic volume, height and land coverage existing or approved on May 4, 1979, without the review or approval of the agency or any planning or regulatory authority of the State of Nevada whose review or approval would be required for a new structure.

(f) The following provisions apply to any internal or external modification, remodeling, change in use, or

repair of a structure housing gaming under a nonrestricted license which is not prohibited by article VI(d):

(1) The agency's review of an external modification of the structure which requires a permit from a local government is limited to determining whether the external modification will do any of the following:

(A) Enlarge the cubic volume of the structure;

(B) Increase the total square footage of area open to one approved for public use on May 4, 1979;

(C) Convert an area devoted to the private use of guests to an area open to public use;

(D) Increase the public area open to public use which is used for gaming beyond the limits contained in paragraph (3); and

(E) Conflict with or be subject to the provisions of any of the agency's ordinances that are generally applicable throughout the region.

The agency shall make this determination within 60 days after the proposal is delivered to the agency in compliance with the agency's rules or regulations governing such delivery unless the applicant has agreed to an extension of this time limit. If an external modification is determined to have any of the effects enumerated in subparagraphs (A) through (C), it is prohibited. If an external modification is determined to have any of the effects enumerated in subparagraph (D) or (E), it is subject to the applicable provisions of this compact. If an external modification is determined to have no such effect, it is not subject to the provisions of this compact.

(2) Except as provided in paragraph (3), internal modification, remodeling, change in use or repair of a structure housing gaming under a nonrestricted license is not a project and does not require the review or approval of the agency.

(3) Internal modification, remodeling, change in use or repair of areas open to public use within a structure housing gaming under a nonrestricted license which alone or in combination with any other such modification, remodeling, change in use or repair will increase the total portion of those areas which is actually used for gaming by more than the product of the total base area, as defined below, in square feet existing on or approved before August 4, 1980, multiplied by 15 percent constitutes a project and is subject to all of the provisions of this compact relating to projects. For purposes of this paragraph and the determination required by article VI(g), base area means all of the area within a structure housing gaming under a nonrestricted license which may be open to public use, wither or not gaming is actually conducted or carried on in that area, except retail stores, convention centers and meeting rooms, administrative offices, kitchens, maintenance and storage areas, rest rooms, engineering and mechanical rooms, accounting rooms and counting rooms.

(g) In order to administer and enforce the provisions of paragraphs (d), (e) and (f), the State of Nevada through its appropriate planning or regulatory agency, shall require the owner or licensee of a structure housing gaming under a nonrestricted license to provide:

(1) Documents containing sufficient information for the Nevada agency to establish the following relative to the structure:

(A) The location of its external walls;

(B) Its total cubic volume;

(C) Within its external walls, the area in square feet open or approved for public use and the area in square feet devoted to or approved for the private use of guests on May 4, 1979;

(D) The amount of surface area of land under the structure; and

(E) The base area as defined in paragraph (f)(3) in square feet existing on or approved before August 4, 1980.

(2) An informational report whenever any internal modification, remodeling, change in use, or repair will increase the total portion of the areas open to public use which is used for gaming.

The Nevada agency shall transmit this information to the Tahoe Regional Planning Agency.

(h) Gaming conducted pursuant to a restricted gaming license is exempt from review by the agency if it is incidental to the primary use of the premises.

(i) The provisions of subdivisions (d) and (e) are intended only to limit gaming and related activities as conducted within a gaming establishment, or construction designed to permit the enlargement of such activities, and not to limit any other use of property zoned for commercial use or the accommodation of tourists, as approved by the agency.

(j) Legal actions arising out of or alleging a violation of the provisions of this compact, of the regional plan or of an ordinance or regulation of the agency or of a

permit or a condition of a permit issued by the agency are governed by the following provisions:

(1) This subdivision applies to:

(A) Actions arising out of activities directly undertaken by the agency.

(B) Actions arising out of the issuance to a person of a lease, permit, license or other entitlement for use by the agency.

(C) Actions arising out of any other act or failure to act by any person or public agency.

Such legal actions may be filed and the provisions of this subdivision apply equally in the appropriate courts of California and Nevada and of the United States.

(2) Venue lies:

(A) If a civil or criminal action challenges an activity by the agency or any person which is undertaken or to be undertaken upon a parcel of real property, in the State or Federal judicial district where the real property is situated.

(B) If an action challenges an activity which does not involve a specific parcel of land (such as an action challenging an ordinance of the agency), in any State or Federal court having jurisdiction within the region.

(3) Any aggrieved person may file an action in an appropriate court of the States of California or Nevada or of the United States alleging noncompliance with the provisions of this compact or with an ordinance or regulation of the agency. In the case of governmental agencies, "aggrieved person" means the Tahoe Regional Planning Agency or any State,

Federal or local agency. In the case of any person other than a governmental agency who challenges an action of the Tahoe Regional Planning Agency, "aggrieved person" means any person who has appeared, either in person, through an authorized representative, or in writing, before the agency at an appropriate administrative hearing to register objection to the action which is being challenged, or who had good cause for not making such an appearance.

(4) A legal action arising out of the adoption or amendment of the regional plan or of any ordinance or regulation of the agency, or out of the granting or denial of any permit, shall be commenced within 60 days after final action by the agency. All other legal actions shall be commenced within 65 days after discovery of the cause of action.

(5) In any legal action filed pursuant to this subdivision which challenges an adjudicatory act or decision of the agency to approve or disapprove a project, the scope of judicial inquiry shall extend only to whether there was prejudicial abuse of discretion. Prejudicial abuse of discretion is established if the agency has not proceeded in a manner required by law or if the act or decision of the agency was not supported by substantial evidence in light of the whole record. In making such a determination the court shall not exercise its independent judgment on evidence but shall only determine whether the act or decision was supported by substantial evidence in light of the whole record. In any legal action filed pursuant to this subdivision which challenges a legislative act or decision of the agency (such as the adoption of the regional plan and the enactment of implementing ordinances), the scope of the judicial inquiry shall extend only to the questions of whether the act or decision has been arbitrary, capricious or

lacking substantial evidentiary support or whether the agency has failed to proceed in a manner required by law.

(6) The provisions of this subdivision do not apply to any legal proceeding pending on the date when this subdivision becomes effective. Any such legal proceeding shall be conducted and concluded under the provisions of law which were applicable prior to the effective date of this subdivision.

(7) The security required for the issuance of a temporary restraining order or preliminary injunction based upon an alleged violation of this compact or any ordinance, plan, rule or regulation adopted pursuant thereto is governed by the rule or statute applicable to the court in which the action is brought, unless the action is brought by a public agency or political subdivision to enforce its own rules, regulations and ordinances in which case no security shall be required.

(k) The agency shall monitor activities in the region and may bring enforcement actions in the region to ensure compliance with the regional plan and adopted ordinances, rules, regulations and policies. It if is found that the regional plan, or ordinances, rules, regulations and policies are not being enforced by a local jurisdiction, the agency may bring action in a court of competent jurisdiction to insure compliance.

(l) Any person who violates any provision of this compact or of any ordinance or regulation of the agency or of any condition of approval imposed by the agency is subject to a civil penalty not to exceed $5,000. Any such person is subject to an additional civil penalty not to exceed $5,000 per day, for each day on which such a

violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.

(m) The agency is hereby empowered to initiate, negotiate and participate in contracts and agreements among the local governmental authorities of the region, or any other intergovernmental contracts or agreements authorized by State or Federal law.

(n) Each intergovernmental contract or agreement shall provide for its own funding and staffing, but this shall not preclude financial contributions from the local authorities concerned or from supplementary sources.

(o) Every record of the agency, whether public or not, shall be open for examination to the legislature and controller of the State of California and the legislative auditor of the State of Nevada.

(p) Approval by the agency of any project expires 3 years after the date of final action by the agency or the effective date of the amendments to this compact, whichever is late, unless construction is begun within that time and diligently pursued thereafter or the use or activity has commenced. In computing the 3-year period any period of time during which the project is the subject of a legal action which delays or renders impossible the diligent pursuit of that project shall not be counted. Any license, permit or certificate issued by the agency which has an expiration date shall be extended by that period of time during which the project is the subject of such legal action as provided in this subdivision.

(q) The governing body shall maintain a current list of real property known to be available for exchange with the United States or with other owners of real property in order to facilitate exchanges of real property by owners of real property in the region.

ARTICLE VII. – ENVIRONMENTAL IMPACT STATEMENTS

(a) The Tahoe Regional Planning Agency when acting upon matters that have a significant effect on the environment shall:

(1) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(2) Prepare and consider a detailed environmental impact statement before deciding to approve or carry out any project. The detailed environmental impact statement shall include the following:

(A) The significant environmental impacts of the proposed project;

(B) Any significant adverse environmental effects which cannot be avoided should the project be implemented;

(C) Alternatives to the proposed project;

(D) Mitigation measures which must be implemented to assure meeting standards of the region;

(E) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(F) Any significant irreversible and irretrievable commitments of resources which would be involved in the proposed project should it be implemented; and

(G) The growth-inducing impact of the proposed project;

(3) Study, develop and describe appropriate alternatives to recommended courses of action for any project which involves unresolved conflicts concerning alternative uses of available resources;

(4) Make available to States, counties, municipalities, institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the region's environment; and

(5) Initiate and utilize ecological information in the planning and development of resource-oriented projects.

(b) Prior to completing an environmental impact statement, the agency shall consult with and obtain the comments of any Federal, State or local agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State and local agencies which are authorized to develop and enforce environmental standards shall be made available to the public and shall accompany the project through the review processes. The public shall be consulted during the environmental impact statement process and views shall be solicited during a public comment period not to be less than 60 days.

(c) Any environmental impact statement required pursuant to this article need not repeat in its entirety any information or data which is relevant to such a statement and is a matter of public record or is generally available to the public, such as information contained in an environmental impact report prepared pursuant to the California Environmental Quality Act or a Federal environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969. However, such information or data shall be briefly described in the environmental impact statement and its relationship to the environmental impact statement shall be indicated.

In addition, any person may submit information relative to a proposed project which may be included, in whole or in part, in any environmental impact statement required by this article.

(d) In addition to the written findings specified by agency ordinance to implement the regional plan, the agency shall make either of the following written findings before approving a project for which an environmental impact statement was prepared:

(1) Changes or alterations have been required in or incorporated into such project which avoid or reduce the significant adverse environmental effects to a less than significant level; or

(2) Specific considerations, such as economic, social or technical, make infeasible the mitigation measures or project alternatives discussed in the environmental impact statement on the project.

A separate written finding shall be made for each significant effect identified in the environmental impact statement on the project. All written findings must be supported by substantial evidence in the record.

(e) The agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this compact in order to recover the estimated costs incurred by the agency in preparing an environmental impact statement under this article.

(f) The agency shall adopt by ordinance a list of classes of projects which the agency has determined will not have a significant effect on the environment and therefore will be exempt from the requirement for the preparation of an environmental impact statement under this article. Prior to adopting the list, the agency shall make a written finding supported by substantial evidence in the record that each class of projects will not have a significant effect on the environment.

Article VIII. – Finances

(a) On or before September 30 of each calendar year the agency shall establish the amount of money necessary to support its activities for the next succeeding fiscal year commencing July 1 of the following year. The agency shall apportion $75,000 of this amount among the counties within the region on the same ratio to the total sum required as the full cash valuation of taxable property within the region in each county bears to the total full cash valuation of taxable property within the region. In addition, each county within the region in California shall pay $18,750 to the agency and each county within

the region in Nevada, including Carson City, shall pay $12,500 to the agency, from any funds available therefor. The State of California and the State of Nevada may pay to the agency by July 1 of each year any additional sums necessary to support the operations of the agency pursuant to this compact. If additional funds are required, the agency shall make a request for the funds to the States of California and Nevada. Requests for State funds must be apportioned two-thirds from California and one-third from Nevada. Money appropriated shall be paid within 30 days.

(b) The agency may fix and collect reasonable fees for any services rendered by it.

(c) The agency shall submit an itemized budget to the States for review with any request for State funds, shall be strictly accountable to any county in the region and the States for all funds paid by them to the agency and shall be strictly accountable to all participating bodies for all receipts and disbursement.

(d) The agency is authorized to receive gifts, donations, subventions, grants, and other financial aids and funds; but the agency may not own land except as provided in subdivision (i) of article III.

(e) The agency shall not obligate itself beyond the moneys due under this article for its support from the several counties and the States for the current fiscal year, plus any moneys on hand or irrevocably pledged to its support from other sources No obligation contracted by the agency shall bind either of the party States or any political subdivision thereof.

ARTICLE IX. – TRANSPORTATION DISTRICT

(a) The Tahoe transportation district is hereby established as a special purpose district. The boundaries of the district are coterminous with those of the region.

(b) The business of the district shall be managed by a board of directors consisting of:

(1) One member of the county board of supervisors of each of the counties of El Dorado and Placer;

(2) One member of the city council of the city of South Lake Tahoe;

(3) One member each of the board of county commissioners of Douglas County and of Washoe County;

(4) One member of the board of supervisors of Carson City;

(5) The director of the California Department of Transportation; and

(6) The director of the department of transportation of the State of Nevada.

Any director may designate an alternate.

(c) The vote of at least five of the directors must agree to take action. If at least five votes in favor of an action are not cast, an action of rejection shall be deemed to have been taken.

(d) The Tahoe transportation district may in accordance with the adopted transportation plan:

(1) Own and operate a public transportation system to the exclusion of all other publicly owned transportation systems in the region.

(2) Acquire upon mutually agreeable terms any public transportation system or facility owned by a county, city or special purpose district within the region.

(3) Hire the employees of existing public transportation systems that are acquired by the district without loss of benefits to the employees, bargain collectively with employee organizations, and extend pension and other collateral benefits to employees.

(4) Fix the rates and charges for transit services provided pursuant to this subdivision.

(5) Issue revenue bonds and other evidence of indebtedness.

(6) By resolution, determine and propose for adoption a tax for the purpose of obtaining services of the district. The tax proposed must be general and of uniform operation throughout the region and may not be graduated in any way. the district is prohibited from imposing an ad valorem tax, a tax measured by gross or net receipts on business, a tax or charge that is assessed against people or vehicles as they enter or leave the region, and any tax, direct or indirect, on gaming tables and devices.

Any such proposition must be submitted to the voters of the district and shall become effective upon approval of two-thirds of the voters voting on the proposition. The revenues from any such tax must be used for the service for which it was imposed, and for no other purpose.

(7) Provide service from inside the region to convenient airport, railroad and interstate bus terminals without regard to the boundaries of the region.

(e) The legislatures of the States of California and Nevada may, by substantively identical enactments, amend this article.

ARTICLE X. – MISCELLANEOUS

(a) It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. Except as provided in subdivision (c), the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the remaining State and in full force and effect as to the State affected as to all severable matters.

(b) The agency shall have such additional powers and duties as may hereafter be delegated or imposed upon it from time to time by the action of the legislature of either State concurred in by the legislature of the other.

(c) A State party to this compact may withdraw therefrom by enacting a statute repealing the compact. Notice of withdrawal shall be communicated officially and in writing to the Governor of the other State and to the agency administrators. This provision is not severable, and if it is held to be unconstitutional or invalid, no

other provision of this compact shall be binding upon the State of Nevada or the State of California.

(d) No provision of this compact shall have any effect upon the allocation, distribution or storage or interstate waters or upon any appropriative water right.

SEC. 2. The Secretary of Agriculture and the heads of other appropriate agencies are authorized, upon the request of the Tahoe Regional Planning Agency, to cooperate with the Tahoe Regional Planning Agency in all respects compatible with carrying out the normal duties of their agencies.

SEC. 3. The consent to the compact by the United States is subject to the condition that the President may appoint a nonvoting representative of the United States to the governing body of the Tahoe Regional Planning Agency.

SEC. 4. Any additional powers conferred on the agency pursuant to article X, section 1(b) of the compact shall not be exercised unless consented to by the Congress.

SEC. 5. Nothing contained in this Act or in the compact consented to shall in any way affect the powers, rights, or obligations of the United States, or the applicability of any law or regulation of the United States in, over or to the region or waters which are the subject of the compact, or in any way affect rights owned or held by or for Indians or Indian tribes subject to the jurisdiction of the United States.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PLAINTIFFS' EXHIBIT 7

TAHOE REGIONAL PLANNING AGENCY
RESOLUTION NO. 81-5

WHEREAS Public Law 96-551, 94 Stat. 3233, signed by the President of the United States on December 19, 1980, revises the bi-state compact establishing the Tahoe Regional Planning Agency (TRPA) and mandates that this body devise a single, enforceable plan for the regulation of development in the Lake Tahoe Basin;

AND WHEREAS the waters of Lake Tahoe and other resources of the region constitute unique and irreplaceable resources which are threatened with deterioration and degeneration;

AND WHEREAS preserving and enhancing the quality of such waters and resources is a matter of national policy;

AND WHEREAS the experience of this body is that a program providing public funds for the acquisition of environmentally sensitive lands in the Lake Tahoe Basin is a vital and necessary part of the efforts to effectuate that policy;

AND WHEREAS an acquisition program administered by appropriate governmental authority is necessary to prevent hardship to affected private landowners in the Lake Tahoe Basin;

AND WHEREAS an ongoing acquisition program will enable this body to better utilize its resources and

direct its efforts toward development and administration of a plan for the Lake Tahoe Basin pursuant to Public Law 96-551;

NOW THEREFORE BE IT RESOLVED that this body unanimously urges authorization of the maximum possible funding resources at the earliest possible time;

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the President of the United States, to the Governors of the States of Nevada and California, to the Federal and State legislative delegations, and to all appropriate Federal, State and regional entities.

UNANIMOUSLY PASSED AND ADOPTED this twenty-eighth day of May, 1981 by the Governing Body of the Tahoe Regional Planning Agency.

Dated: _____, 1981

By: s/
Roland D. Westergard, Chairman
Tahoe Regional Planning Agency

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PLAINTIFF'S EXHIBIT 51

TRPA REGULAR MEETING MINUTES
NOVEMBER 17, 1983

The October financial statement is in the packet and is recommended for approval by the Finance Committee. Additionally, a memo from Sandy McAdler, Agency Finance Director, sets forth the procedure for handling of securities relating to projects. One of five different option is to post cash bonds, and TRPA is currently holding approximately $250,000 worth of securities in the form of cash deposits which require extensive staff administration in keeping track of interest on the individual accounts. Staff recommends retention of approximately $50,000 in passbook savings to cover demands against security refunds, with the remainder be invested at a higher rate (9.8% annually). It is recommended that the difference between the 5¼% now being earned (refunded to the person posting the security) and the 9.8% be taken as an administrative fee. Those persons posting the cash bond would still earn the same amount of interest they previously earned.

MOTION by Mr. Stewart to approve the Finance Committee recommendations on the October financial statement and on the handling of an administrative fees for cash securities. The motion carried unanimously.

B. Litigation Committee

Mr. Midkiff advised the Board that, pursuant to an agreement between TRPA's Litigation Committee and the

Lahontan Regional Board, a packet of information regarding the Brockway suit had been prepared. Staff counsel is preparing an additional memorandum regarding the vested rights issue. A meeting will be held with the Lahontan Board on or before its December 8 meeting to discuss that presentation and any questions they may have on that particular suit. Mr. Heikka directed that nothing be agreed to until there is full Board determination on the matter.

F. Governing Body Members

Mr. Sevison asked about the status of permits issued under last year's allocation. Staff advised these would be dealt with under the adopting ordinance but proposed language could be made available to the Board members now with further discussion to be scheduled for the December agenda. Mr. Sevison explained that at the end of the year the allocation period ends. Staff advised that a memo had been mailed to the Board summarizing the issues and options available in this regard. Staff counsel has advised that, because these applications were not on file with TRPA at the effective date of the moratorium, these would have to be handled under the new Plan. They are, however, in a situation where they could be considered the 1983 allocation in that these were projects which could not proceed in El Dorado and Placer Counties because of the fact that they had to go through an allocation system. Mr. Sevison asked that, in fairness to these applicants, these applications be allowed to proceed with review under existing standards even though final approval cannot be granted. Mr. Midkiff advised that there is a legal problem with using existing standards.

Chairman Reed directed that this matter be placed on the December agenda for a determination.

XI RESOLUTIONS

Consideration of Amendments to Resolution 83-21 or Other Resolutions Relating Thereto

Mr. Midkiff reminded the Board that the expiration of the prohibition from accepting or approving applications as set forth in Resolution 83-21 expires November 26, 1983. The conditions that led to adoption of that prohibition, however, continue in place, since TRPA does not have an amended Regional Plan and the required findings cannot be made with regard to projects. Staff requests that the Board give direction to staff on how to handle the many inquiries which will be coming in the next few days. In the absence of Board direction, staff will continue the moratorium. No action was taken.

XII PENDING MATTERS – none

XIII ADJOURNMENT – The meeting adjourned at 5:00 p.m.

This meeting was taped in its entirety. Anyone wishing to listen to the tapes may call (916) 541-0246.

Respectfully submitted,

/s/ Julie D. Frame
Julie D. Frame
Administrative Assistant

Approved as submitted on December 21, 1983

JOHNSON-PERKINS & ASSOCIATES, INC.
REAL ESTATE APPRAISERS & CONSULTANTS

COMPARABLE NEVADA LOW CAPABILTY LAND SALES CHART
Table A

Sale Number	Property Identification A.P.N.	Sale Date	Total Land Area/Land Coverage	Soil Capability Level/IPES Score	Sale Price
NV-1	Douglas County, Nevada 05-312-08	09-84	11,909± s.f./ 119± s.f.	2 NA	$ 42,000
NV-2	Douglas County, Nevada 11-112-05	09-84	16,149± s.f./ 161± s.f.	1a NA	$6,000
NV-3	Douglas County, Nevada 07-324-04	07-84	13,933± s.f./ 139± s.f.	1a, 2 NA	$10,600
NV-4	Douglas County, Nevada 03-172-10	02-84	16,990± s.f./ 170± s.f.	1a, 2 NA	$95,000
NV-5	Douglas County, Nevada 03-130-02	10-85	15,935± s.f./ 159± s.f.	1a NA	$45,000
NV-6	Douglas County, Nevada 03-130-01	10-85	16,012± s.f./ 160± s.f.	1a NA	$45,000
NV-7	Washoe County, Nevada 125-192-04	04-84	38,990± s.f./ 390± s.f.	1a NA	$40,000
NV-8	Washoe County, Nevada 125-253-02	03-86	6,826± s.f./ 341± s.f.	3 NA	$18,000

JOHNSON-PERKINS & ASSOCIATES, INC.
REAL ESTATE APPRAISERS & CONSULTANTS

COMPARABLE CALIFORNIA LOW CAPABILTY LAND SALES CHART
Table B

Sale Number	Property Identification A.P.N.	Sale Date	Total Land Area/Land Coverage	Soil Capability Level/ IPES Score	Sale Price
CA-1	Rubicon Bay, California 16-481-13	01-81	10,560± s.f./ 106± s.f.	1a 600	$18,415
CA-2	Meeks Bay, California 16-091-08	05-81	10,625± s.f./ 106± s.f.	1a 736	$15,000
CA-3	West Shore, California 16-544-04	03-84	17,370± s.f./ 174± s.f.	1a 707	$10,750
CA-4	Alpine Peaks, California 83-430-04	06-84	15,300± s.f./ 153± s.f.	3 450	$10,500
CA-5	West Shore, California 16-052-04	05-86	5,700± s.f./ 627± s.f.	1a 659	$10,000

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEFENDANTS' EXHIBIT 81

COMPARABLE GREENBELT LAND SALES CHART
NEVADA TAHOE BASIN ACT
Table No. F

Sale Number	A.P.N. Location	Land Area	Sale Date	Sale Price
GBS-1	131-080-33 Incline Village, Washoe County	21,432± s.f.	3-23-90	$40,000
GBS-2	125-503-13 Incline Village, Washoe County	6,970± s.f.	02-05-91	$ 9,000
GBS-3	125-163-27 Incline Village, Washoe County	10,150± s.f.	04-08-91	$ 7,125
GBS-4	123-161-07 Crystal Bay, Washoe County	16,117± s.f.	06-21-91	$18,750
GBS-5	123-161-09 Crystal Bay, Washoe County	14,375± s.f.	06-21-91	$16,750
GBS-6	123-161-28 Crystal Bay, Washoe County	11,800± s.f.	06-21-91	$72,500
GBS-7	123-163-03 Crystal Bay, Washoe County	6,752± s.f.	07-17-91	$10,000
GBS-8	123-161-13 Crystal Bay, Washoe County	20,038± s.f.	12-12-91	$16,000
GBS-9	05-181-28 Zephyr Heights, Douglas County	9,839± s.f.	03-03-93	$13,000
GBS-10	125-503-23 Incline Village, Washoe County	8,712± s.f.	05-24-95	$15,000
GBS-11	125-156-02 Incline Village, Washoe County	12,953± s.f.	08-14-95	$12,500
GBS-12	122- 114-03 Incline Village, Washoe County	17,440± s.f.	10-11-95	$15,000

JOHNSON-PERKINS & ASSOCIATES, INC.
REAL ESTATE APPRAISERS & CONSULTANTS
Reno ■ Lake Tahoe

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEFENDANTS' EXHIBIT 82

COMPARABLE SEZ LOT SALES CHART
Table G

Sale Number	A.P.N. Location	Parcel Size	Sale Date	Sale Price
SEZ-1	83-450-29 Alpine Peaks, Placer County, CA	10,000± s.f.	06-27-84	$12,000
SEZ-2	33-233-06 Country Club Heights El Dorado County, CA	10,800± s.f.	06-27-88	$6,000
SEZ-3	33-751-06 Country Club Heights El Dorado County, CA	9,600± s.f.	09-28-87	$5,000
SEZ-4	14-242-11 & 12 Kailua Park El Dorado County, CA	20,000± s.f.	01-05-90	$13,000
SEZ-5	128-060-05 Incline Village Washoe County, NV	9,148± s.f.	06-11-81	$42,500
SEZ-6	131-261-11 Incline Village Washoe County, NV	30,492± s.f.	01-07-82	$110,000
SEZ-7	07-243-03 Middle Kingsbury Douglas County, NV	12,632± s.f.	Offer 04-01-82	$11,500

JOHNSON-PERKINS & ASSOCIATES, INC.
REAL ESTATE APPRAISERS & CONSULTANTS
Reno ■ Lake Tahoe

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEFENDANTS' EXHIBIT 244

ATTACHMENT C

TAHOE REGIONAL PLANNING AGENCY

RESOLUTION NO. 82 - 11

RESOLUTION OF THE GOVERNING BODY OF THE TAHOE REGIONAL PLANNING AGENCY ADOPTING ENVIRONMENTAL THRESHOLD CARRYING CAPACITIES FOR THE LAKE TAHOE REGION

WHEREAS, the Governing Body of the Tahoe Regional Planning Agency ("TRPA") finds:

1. On December 19, 1980 the Tahoe Regional Planning Compact ("Compact") was amended, requiring, among other things, that the TRPA adopt Environmental Threshold Carrying Capacities for the Lake Tahoe Region. The Compact further requires that, within one (1) year after the adoption of the Environmental Threshold Carrying Capacities TRPA shall amend its regional plan so that, at a minimum, the plan and all of its elements, as implemented through Agency ordinances, rules and regulations, achieves and maintains the adopted Environmental Threshold Carrying Capacities.

2. The Compact finds, among other things, that: (a) the waters of Lake Tahoe and other resources of the Lake Tahoe Region are threatened with deterioration or degeneration; (b) said region exhibits unique environmental and ecological values; (c) said region is experiencing

problems of resource use and deficiencies of environmental control; (d) increasing urbanization is threatening the ecological values of said region; (e) maintenance of the social and economic health of the region depends on maintaining the significant scenic, recreational, educational, scientific, natural and public health values provided by said region; (f) there is a public interest in protecting, preserving and enhancing said values for the residents of and visitors to said region; (g) in order to preserve the scenic beauty and outdoor recreational opportunities of said region, there is a need to insure an equilibrium between said region's natural endowment and its man-made environment; and (h) it is imperative that there be established a TRPA with the powers, among others, to establish Environmental Threshold Carrying Capacities and to adopt and enforce a regional plan and implementing ordinances which will achieve and maintain such capacities while providing opportunities for orderly growth and development consistent therewith.

3. The Compact defines "environmental threshold carrying capacity" as "an environmental standard necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the region or to maintain public health and safety within the region".

4. Although not required to do so by the Compact, the Governing Body and Advisory Planning Commission of the TRPA, prior to the adoption of this resolution, conducted duly-noticed public hearings, at which hearings considerable oral testimony and documentary evidence were received and considered by the Governing Body and Advisory Planning Commission. Evidence in the record of said hearings, which evidence is hereby

determined substantial, established that each of the Environmental Threshold Carrying Capacities adopted by this resolution is necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the Lake Tahoe Region or to maintain public health and safety within the region.

5. The Environmental Threshold Carrying Capacities adopted hereby comply in all respects, procedural and substantive, with the Compact, as amended, and are necessary to effectuate and implement the same.

6. In addition to other evidence received at said public hearings, the Governing Body of the TRPA, prior to the adoption of this resolution, has received for the administrative record and had opportunity to review, a lengthy, detailed study report concerning the Environmental Threshold Carrying Capacities, which report was prepared by TRPA staff and consultants and substantiates the Environmental Threshold Carrying Capacities adopted hereby.

7. The Environmental Threshold Carrying Capacities adopted by this resolution were the subject of an environmental impact statement ("EIS"), which was prepared, considered, circulated, certified and otherwise processed, reviewed and approved by the TRPA in accordance with the substantive and procedural provisions of Article VII of the Compact. Without limiting the generality of the foregoing, the Governing Body further finds that the said EIS contained the information required by Article VII(a)(2) of the Compact and provided the Governing Body substantial information upon which it could

base a reasoned review and evaluation of the environmental impacts of the Environmental Threshold Carrying Capacities adopted by this resolution. The Governing Body further finds that, prior to approving this resolution, it made the alternative written findings required by Article VII(d) of the Compact, a separate written finding having been made for each significant effect identified in the EIS as resulting from the Environmental Threshold Carrying Capacities adopted hereby. The Governing Body further finds that said written findings are supported by substantial evidence in the record.

8. Pursuant to Article II(i) of the Compact, Environmental Threshold Carrying Capacities are to include, but not be limited to, standards for air quality, water quality, soil conservation, vegetation preservation and noise, thus permitting, if not requiring, the adoption of standards for other elements necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the Lake Tahoe Region or to maintain public health and safety within the region.

9. In certain instances it was not reasonably possible or feasible to set forth Environmental Threshold Carrying Capacities as numerical standards, requiring in such instances that standards be set forth as management standards. The Governing Body further finds that the inability to set forth a numerical standard for a particular Environmental Threshold Carrying Capacity does not render such Environmental Threshold Carrying Capacity improper or inappropriate for adoption under the Compact. In association with adoption of Environmental Threshold Carrying Capacities, the Governing Body is adopting policy statements that will provide specific

direction for Agency staff in development of the regional plan. It is the intent of the Governing Body that amendment or repeal of the Policy Statements shall be subject to the dual-majority voting provisions of Article III(g)(1) of the Compact.

10. The definition of "environmental threshold carrying capacity" set forth in Article II(i) of the Compact requires an exercise of discretion by the Governing Body in setting a standard "necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the region or to maintain public health and safety within the region". In approving this resolution, the Governing Body of the TRPA recognizes that it must amend the TRPA regional plan so that, at a minimum, the plan and all of its elements, as implemented through TRPA ordinances, rules and regulations, achieves and maintains the adopted Environmental Threshold Carrying Capacities. The Governing Body further recognizes that it is required under Article V(d) of the Compact to adopt a regional plan attaining and maintaining federal, state, or local air and water quality standards, whichever are strictest, in the respective portions of the Lake Tahoe Region for which such standards are applicable.

11. The Environmental Threshold Carrying Capacities adopted by this resolution are to be achieved and maintained through implementation of TRPA's regional plan. The Governing Body further finds, however, that said Environmental Threshold Carrying Capacities, as achieved and maintained through implementation of TrRPA's [sic] regional plan, may be achieved and maintained pursuant to an orderly time schedule adopted for that purpose.

12. In adopting this resolution, the TRPA Governing Body expressly recognizes that there is a distinction between adoption of Environmental Threshold Carrying Capacities and the subsequent planning process resulting in an amended regional plan so that, at a minimum, the plan and all of its elements achieves and maintains the adopted Environmental Threshold Carrying Capacities.

13. Inasmuch as the Compact specifies no particular method for the adoption of Environmental Threshold Carrying Capacities, this resolution is a proper method for the adoption thereof.

14. The Governing Body recognizes that, in adoption of Environmental Threshold Carrying Capacities, it is establishing standards for the Lake Tahoe Region which must be carried out through the regional plan and that its jurisdiction to achieve and maintain those standards is limited to the Lake Tahoe Region.

15. The Governing Body recognizes that, in establishing Environmental Threshold Carrying Capacities for the Lake Tahoe Region, it is establishing the basis for a long-term program which will protect and enhance the significant environmental values of the region, which program will be reviewed from time to time to ensure its consistency with the currently available scientific evidence and technical and other information. Attainment of the Environmental Threshold Carrying Capacities prior to the dates scheduled in the regional plan, while beneficial, is not required.

16. The Governing Body recognizes that the Tahoe Regional Planning Compact, as amended, provides for

the adoption of an orderly program to attain the environmental standards through the development of its regional plan, including time schedules for implementation of specific measures necessary to attain those standards and that an immediate or short-range demonstration of attainment of some standards is physically impossible.

17. The Governing Body recognizes and respects the legislative intent of the States of Nevada and California and the United States Congress in entering into and approving the Tahoe Regional Planning Compact, as amended.

18. The Governing Body recognizes that the degree of success in attaining and maintaining the Environmental Threshold Carrying Capacities depends upon a program of mutual cooperation among the two states, local governmental entities, the Federal Government and the private sector in implementing its regional plan.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Tahoe Regional Planning Agency as follows:

1. That the Governing Body will develop its regional plan, recognizing that out-of-basin sources of air pollution may affect its ability to achieve and maintain environmental standards. The cooperation of the States of California and Nevada and the Federal Government will be required to control sources of air pollution which contribute nitrogen loadings to the Lake Tahoe Region.

2. That the Governing Body hereby recognizes the long-term nature of the planning process established by the compact and further recognizes that attainment and

maintenance of the Environmental Threshold Carrying Capacities is a continuing process requiring establishment of time schedules by which the environmental standards will be attained, and the Governing body intends to amend its regional plan to meet such requirements with realistic time schedules and the best available means.

3. That the Governing Body hereby recognizes the long-term nature of the planning process established by the Compact and further recognizes that some of the Environmental Threshold Carrying Capacities for water quality are currently being, and will likely continue to be, exceeded until some time after the full implementation of the loading reductions prescribed by the thresholds.

4. The Environmental Threshold Carrying Capacities shall be reviewed by staff and the Governing Body at the time of adoption of the regional plan to assure that said plan and the Environmental Threshold Carrying Capacities are consistent, and shall be reviewed at least every five years thereafter by the most appropriate means. After such review, the pertinent environmental threshold standards shall be amended where the scientific evidence and technical information indicate:

(a) two or more threshold standards are mutually exclusive; or

(b) substantial evidence to provide a basis for a threshold standard does not exist; or

(c) a threshold standard cannot be achieved; or

(d) a threshold standard is not sufficient to maintain a significant value of the Region

or additional threshold standards are required to maintain a significant value.

The Agency shall maintain a monitoring program to determine progress towards attainment of threshold standards and to provide the basis for such review and amendment of the threshold standards pursuant to the foregoing criteria.

5. That the Governing Body hereby recognizes the long-term nature of establishing, planning for and actually achieving Environmental Threshold Carrying Capacities and will diligently pursue the attainment of those environmental standards through the regional plan and its schedule for implementation. The Governing Body further recognizes that the environmental standards adopted hereby may be considered as part of the environmental review process on projects reviewed pursuant to Article VI(b) of the Compact during the period of time prior to adoption of the regional plan envisioned by Article V(c) of the Compact and adoption of the ordinances required by Article V(g), and that no provision of this resolution or the environmental standards adopted hereby shall affect the maximum number of building permits authorized under the provisions of Article VI(c) of the Compact.

6. That the Governing Body hereby adopts the following as a statement of intent, which will guide the development of the regional plan and actions subsequent to the adoption of that plan:

(a) The Governing Board hereby finds and declares that in adopting these Environmental Threshold Carrying Capacities it does not

intend, and it shall not be construed as authorizing the Agency, to exercise its power to grant or deny a permit in a manner which shall take or damage private property for public use without payment of just compensation.

(b) Nothing in the adoption of these Environmental Threshold Carrying Capacities is intended to increase or decrease the rights of any property owner under the Constitution of California, Nevada or the United States.

(c) It is the intent of the Governing Body that the Environmental Threshold Carrying Capacities will provide the basis for the adoption and enforcement of a regional plan and implementing ordinances which will achieve and maintain such capacities while at the same time providing opportunities for orderly growth and development consistent which such capacities. It is further the intent of the Governing body that the regional plan will provide for carrying out all of the policies expressed in Article I of the Compact.

7. That the Governing Body directs that the regional plan be so structured as to require a fair share of the financial resources required to implement the plan be borne by each of the entities or groups with interests in the region, including the State of California, the State of Nevada, the United States Government, entities of local government with jurisdiction within the Lake Tahoe Region, and the private sector; and

8. That the Environmental Threshold Carrying Capacities set forth in Exhibit "A", attached hereto and incorporated herein by this reference, be, and the same

hereby are, adopted pursuant to Article V(b) of the Compact.

PASSED AND ADOPTED by the Governing Body of the Tahoe Regional Planning Agency this twenty-sixth day of August, 1982, by the following vote:

Ayes: Mr. Heikka, Mr. Hsieh, Mr. Meder, Mr. Stewart, Mr. Kjer, Mr. Steele, Mr. Swachhamer, Mr. Sevinson, Mr. Weise, Mr. Reed, Mr. Jacobsen, Mr. Hall, Mr. Woods, Mr. Ferrari

Nays: None

Abstain: None

Absent: None

/s/ Bennie D. Ferrari
Bennie D. Ferrari, Chairman

EXHIBIT A
TO RESOLUTION NO. 82-11

RESOLUTION OF THE GOVERNING BODY OF THE TAHOE REGIONAL PLANNING AGENCY ADOPTING ENVIRONMENTAL THRESHOLD CARRYING CAPACITIES FOR THE LAKE TAHOE REGION

WATER QUALITY

Pelagic Lake Tahoe

NUMERICAL STANDARD
Reduce dissolved inorganic nitrogen (N) loading from all sources by 25 percent of the 1973-81 annual average. Achieve the following long term water quality standards:

- Annual mean phytoplankton primary productivity: 52 gmC/m^2/yr.
- Winter (December – March) mean Secchi disk transparency: 33.4m.

POLICY

This threshold is currently being exceeded and will likely continue to be exceeded until some time after full implementation of the loading reductions prescribed by the thresholds.

MANAGEMENT STANDARD

Reduce the loading of dissolved phosphorus, iron, and other algal nutrients from all sources as required to achieve ambient standards for primary productivity and transparency.

Reduce dissolved inorganic nitrogen loads from surface runoff by approximately 50 percent, from groundwater approximately 30 percent, and from atmospheric sources approximately 20 percent of the 1973-81 annual average. This threshold relies on predicted reductions in pollutant loadings from out-of-basin sources as part of the total pollutant loading reduction necessary to attain environmental standards, even though the agency has no direct control over out-of-basin sources. The cooperation of the States of California and Nevada will be required to control sources of air pollution which contribute nitrogen loadings to the Lake Tahoe Region.

Littoral Lake Tahoe

NUMERICAL STANDARD

Reduce dissolved inorganic nitrogen loading to Lake Tahoe from all sources by 25 percent of the 1973-81 annual average.

MANAGEMENT STANDARD

Reduce dissolved inorganic nitrogen loads from surface runoff by approximately 50 percent, from groundwater approximately 30 percent, and from atmospheric sources approximately 20 percent of the 1973-81 annual average. This threshold relies on predicted reductions in pollutant loadings from out-of-basin sources as part of the total pollutant loading reduction necessary to attain environmental standards, even though the agency has no direct control over out-of-basin sources. The cooperation of the States of California and Nevada will be required to control sources of air pollution which contribute nitrogen loadings to the Lake Tahoe Region.

NUMERICAL STANDARD

Decrease sediment load as required to attain turbidity values not to exceed 3 JTU. In addition, turbidity shall not exceed 1 JTU in shallow waters of the Lake not directly influenced by stream discharges.

Reduce the loading of dissolved inorganic nitrogen, dissolved phosphorus, iron, and other algal nutrients from all sources to meet the 1967-71 mean values for phyto-plankton primary productivity and periphyton biomass in the littoral zone.

Tributaries

NUMERICAL STANDARD

Attain applicable state standards for concentrations of dissolved inorganic nitrogen, dissolved phosphoorus, and dissolved iron. Attain a 90 percentile value for suspended sediment concentration of 60mg/1.

MANAGEMENT STANDARD

Reduce total annual nutrient and suspended sediment load to achieve loading thresholds for littoral and pelagic Lake Tahoe.

Surface Runoff

NUMERICAL STANDARD

Achieve a 90 percentile concentration value for dissolved inorganic nitrogen of 0.5 mg/1, for dissolved phosphorus of 0.1 mg/1, and for dissolved iron of 0.5 mg/1 in surface runoff directly discharged to a surface water body in the Basin.

Achieve a 90 percentile concentration value for suspended sediment of 250 mg/1.

MANAGEMENT STANDARD

Reduce total annual nutrient and suspended sediment loads as necessary to achieve loading thresholds for tributaries and littoral and pelagic Lake Tahoe.

Groundwater

MANAGEMENT STANDARD

Surface runoff infiltration into the groundwater shall comply with the Uniform Regional Runoff Quality Guidelines as set forth in Table 4-12 of the Draft Environmental Threshold Carrying Capacity Study Report, May, 1982.

Where there is a direct and immediate hydraulic connection between ground and surface waters, discharges to groundwater shall meet the guidelines for surface discharges, and the Uniform Regional Runoff Quality Guidelines shall be amended accordingly.

Other Lakes

NUMERICAL STANDARD

Attain existing water quality standards.

SOIL CONSERVATION

Impervious Cover

MANAGEMENT STANDARD

Impervious cover shall comply with the *Land-Capability Classification of the Lake Tahoe Basin, California-Nevada, A Guide For Planning, Bailey, 1974.*

Stream Environment Zones

NUMERICAL STANDARD

Preserve existing naturally functioning SEZ lands in their natural hydrologic condition, restore all disturbed SEZ lands in undeveloped, unsubdivided lands, and restore 25 percent of the SEZ lands that have been identified as disturbed, developed or subdivided, to attain a 5 percent total increase in the area of naturally functioning SEZ lands.

AIR QUALITY

Carbon Monoxide

NUMERICAL STANDARD

Maintain carbon monoxide concentrations at or below 9 parts per million averaged over 8 hours provided that each state shall review and certify to TRPA by February 28, 1983, as to what their carbon monoxide standards are as of that date, and this TRPA threshold standard shall be changed effective February 28, 1983, if necessary, to be the applicable

state carbon monoxide standard applicable to the respective portions of the region in accordance with Article V(d) of the Compact.

MANAGEMENT STANDARD

Reduce traffic volumes on the U.S. 50 Corridor by 7 percent during the winter from the 1981 base year between 4:00 p.m. and 12:00 midnight, provided that those traffic volumes shall be amended as necessary to meet the respective state standards.

Ozone

NUMERICAL STANDARD

Maintain ozone concentrations at or below 0.08 parts per million averaged over 1 hour.

Maintain oxides of nitrogen (NO_x) emissions at or below the 1981 level.

Regional Visibility

NUMERICAL STANDARD

Achieve 171 kilometers (103 miles) at least 50% of the year as measured by particulate concentrations.

Achieve 97 kilometers (58 miles) at least 90% of the year as measured by particulate concentrations.

Reduce wood smoke emissions by 15% of the 1981 base values through technology, management practices and educational programs.

Subregional Visibility

NUMERICAL STANDARD

Achieve 87 kilometers (54 miles) at least 50% of the year as measured by particulate matter.

Achieve 26 kilometers (16 miles) 90% of the year as measured by particulate matter.

Reduce suspended soil particles by 30% of the 1981 base values through technology, management practices and educational programs. Reduce wood smoke emissions by 15% of the 1981 base values through technology, management practices and educational programs. Reduce vehicle miles of travel by 10% of the 1981 base values.

Nitrate Deposition

MANAGEMENT STANDARD

Reduce the transport of nitrates into the Basin and reduce oxides of nitrogen (NO_x) produced in the Basin consistent with the water quality thresholds.

Reduce vehicle miles of travel in the Basin by 10% of the 1981 base year values.

Odor

POLICY STATEMENT

It is the policy of the TRPA Governing Board in the development of the Regional Plan to reduce fumes from diesel engines to the extent possible.

VEGETATION PRESERVATION

Common Vegetation

MANAGEMENT STANDARD

Increase plant and structural diversity of forest communities through appropriate management practices as measured by diversity indices of species richness, relative abundance, and pattern.

- Maintain the existing species richness of the Basin by providing for the perpetuation of the following plant associations:

  Yellow Pine Forest: Jeffrey pine, White fir, Incense cedar, Sugar pine.

Red Fir Forest: Red Fir, Jeffrey pine, Lodgepole pine, Western white pine, Mountain hemlock, Western juniper.

Subalpine Forest: Whitebark pine, Mountain hemlock, Mountain mahogany.

Shrub Association: Greenleaf and Pinemat manzanita, Tobacco bruch, Sierra chinquapin, Huckleberry oak, Mountain whitethorn.

Sagebrush Scrub Vegetation: Basin sagebrush, Bitterbrush, Douglas chaenactis.

Deciduous Riparian: Quaking aspen, Mountain alder, Black cottonwood, Willow.

Meadow Associations (Wet and Dry Meadow): Mountain squirrel tail, Alphine gentian, Whorled penstemon, Asters, Fescues, Mountain brome, Corn lilies, Mountain bentgrass, Hairgrass, Marsh marigold, elephant heads, Tinker's penney, Mountain Timothy, Sedges, Rushes, Buttercups.

Wetland Associations (Marsh Vegetation): Pond lilies, Buckbean, Mare's tail, Pondweed, Common bladderwort, Bottle sedge, Common spikerush.

Cushion Plant Association (Alpine Scrub): Alpine phlox, Dwarf ragwort, *Draba*.

- Relative Abundants – of the total amount of undisturbed vegetation in the Tahoe Basin;

  1. Maintain at least 4% meadow and wetland vegetation.

  2. Maintain at least 4% deciduous riparian vegetation.

  3. Maintain no more than 25% dominant shrub association vegetation.

  4. Maintain 15-25% of the Yellow Pine Forest in seral stages other than mature.

  5. Maintain 15-25% of the Red Fir Forest in seral stages other than mature.

- Pattern – Provide for the proper juxtaposition of vegetation communities and age classes by;

  1. Limiting acreage size of new forest openings to no more than 8 acres.

  2. Adjacent openings shall not be of the same relative age class or successional stage to avoid uniformity in stand composition and age.

A nondegradation standard to preserve plant communities shall apply to native deciduous trees, wetlands, and meadows while providing for opportunities to increase the acreage of such riparian associations to be consistent with the SEZ threshold.

Native vegetation shall be maintained at a maximum level to be consistent with the limits defined in the *Land Capability Classification of the Lake Tahoe Basin, California-Nevada, A Guide For Planning, Bailey, 1974,* for allowable impervious cover and permanent site disturbance.

POLICY STATEMENT

It shall be a policy of the TRPA Governing Board that a nondegradation standard shall permit appropriate management practices.

Uncommon Plant Communities

NUMERICAL STANDARD

Provide for the nondegradation of the natural qualities of any plant community that is uncommon to the Basin or of exceptional scientific, ecological, or scenic value. This threshold shall apply but not be limited to (1) the deepwater plants of Lake Tahoe, (2) Grass Lake (sphagnum bog), (3) Osgood swamp, and (4) the Freel Peak Cushion Plant community.

Sensitive Plants

NUMERICAL STANDARD

Maintain a minimum number of population sites for each of five sensitive plant species.

Species	Number of Population sites
Carex paucifructus	1
Lewisia pygmaea longipetala	2
Draba asterophora v. *macrocarpa*	2
Draba asterophora v. *asterophora*	5
Rorippa subumbellata	26

WILDLIFE

Special Interest Species

NUMERICAL STANDARD

Provide a minimum number of population sites and disturbance zone for the following six species:

* * *

NOISE

Single Noise Events

NUMERICAL STANDARD

The following maximum noise levels are allowed: (All values are described in decibels)

	Threshold – dSA			
Source	Overall	Less Than 35 MPH	Greater Than 35 MPH	Monitoring Distances
Aircraft	80[1]	–	–	6,500 m – start of takeoff roll 2,000 m – runway threshold approach
	77.1[2]	–	–	6,500 m – start of takeoff roll 2,000 m – runway threshold approach
Boats	82	–	–	50 ft. – engine at 3,000 rpm
Motor vehicles less than 6,000 GVW	–	76	82	50 ft.
greater than 6,000 GVW	–	82	86	50 ft.
Motorcycles	–	77	86	50 ft.
Off road vehicles	–	72	86	50 ft.
Snowmobiles	–	82	–	50 ft.

---

[1] Not to be effective until five years after adoption of Environmental Threshold Carrying Capacities, provided that incremental and phased improvements toward that standard shall be provided by the Regional Plan.

[2] Between the hours of 8:00 p.m. and 8:00 a.m.

Cumulative Noise Events

NUMERICAL STANDARD

Background noise levels shall not exceed existing levels, or the following levels, whichever is less:

Land use category	Average noise level or CNEL range (dBA)
High density residential areas	55
Low density residential areas	50
Hotel/motel facilities	55
Commercial areas	65
Urban outdoor recreation areas	55
Rural outdoor recreation areas	50
Wilderness and roadless areas	25
Critical wildlife habitat areas	25

POLICY STATEMENT

It shall be a policy of the TRPA Governing Body in the development of the Regional Plan to define, locate, and establish CNEL levels for transportation corridors.

RECREATION

POLICY STATEMENT

It shall be the policy of the TRPA Governing Body in development of the Regional Plan to preserve and enhance the high quality recreational experience, including preservation of high quality undeveloped shorezone and other natural areas. In developing the Regional Plan, the staff and Governing Body shall consider provisions for additional access, where lawful and feasible, to the shorezone and high quality undeveloped areas for low density recreational uses.

It shall be the policy of the TRPA Governing Body in development of the Regional Plan to establish and insure a fair share of the total Basin capacity for outdoor recreation is available to the general public.

SCENIC RESOURCES

Roadway and Shoreline Units

NUMERICAL STANDARD

Maintain or improve the numerical rating assigned each unit, including the scenic quality rating of the individual resources within each unit, as recorded in the Scenic Resources Inventory and shown in Tables 13-3, 13-5, 13-8 and 13-9 of the Draft Study Report.

Maintain the 1982 ratings for all roadway and shoreline units as shown in Tables 13-6 and 13-7 of the Draft Study Report.

Restore scenic quality in roadway units rated 15 or below and shoreline units rated 7 or below.

Other Areas

MANAGEMENT STANDARD

Maintain or improve the visual quality of views from bike paths and outdoor recreation areas open to the general public. Upon completion of the 1982 Visual Quality Index, this standard shall become a numerical standard.

Built Environment

POLICY STATEMENT

It shall be the policy of the TRPA Governing Body in development of the Regional Plan, in cooperation with local jurisdictions, to insure the height, bulk, texture, form, materials, colors, lighting, signing and other design elements of new, remodeled and

redeveloped buildings be compatible with the natural, scenic, and recreational values of the region.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
DEFENDANTS' EXHIBIT 227

TAHOE REGIONAL PLANNING AGENCY

ORDINANCE NO. 81-5

AN ORDINANCE AMENDING ORDINANCE NO. 79-10 OF THE TAHOE REGIONAL PLANNING AGENCY IMPLEMENTING THE LAKE TAHOE REGION WATER QUALITY MANAGEMENT PLAN; IMPLEMENTING AMENDMENTS TO SAID WATER QUALITY MANAGEMENT PLAN; REGULATING AND PROHIBITING DEVELOPMENT OF HIGH HAZARD LANDS, PENDING ADOPTION OF A REVISED REGIONAL PLAN UNDER THE TAHOE REGIONAL PLANNING COMPACT, AS AMENDED; PROHIBITING DEVELOPMENT OF STREAM ENVIRONMENT ZONE LANDS AND EXCESS LAND COVERAGE IN DISTRICTS 4 THROUGH 7, PENDING ADOPTION OF SAID REVISED PLAN; PRESCRIBING MITIGATION MEASURES AND FEES; PROHIBITING NEW SUBDIVISIONS, PENDING ADOPTION OF SAID REVISED PLAN; PRESCRIBING A REGULATORY PROGRAM FOR ON-SITE RUNOFF, A PLAN FOR CONSTRUCTION OF REMEDIAL MEASURES AND IMPLEMENTATION OF BEST MANAGEMENT PRACTICES ON FOREST LANDS; ENFORCING PROVISIONS OF THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD 208 PLAN; PRESCRIBING PENALTIES; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

The Governing Body of the Tahoe Regional Planning Agency does ordain as follows:

Section 1.00 Findings

1.10 Section 208 of the Federal Clean Water Act requires the preparation of regional water quality control plans ("208 plans"). The federal regulations require there be no further degradation of the water quality in Lake Tahoe. In 1974 the States of Nevada and California jointly designated the Tahoe Regional Planning Agency as the agency responsible for preparation of a 208 plan for the Lake Tahoe Region, which plan must be certified by said states prior to submission to the United States Environmental Protection Agency for final approval. In 1978 the Tahoe Regional Planning Agency approved the "Lake Tahoe Basin Water Quality Management Plan", which plan, while assessing water quality problems in the Lake Tahoe Region, eliminated several major control measures proposed in the draft of said plan and lacked commitment for enforcement of the controls incorporated therein.

1.20 The State of Nevada conditionally certified the 208 plan approved by the Tahoe Regional Planning Agency, but the California State Water Resources Control Board rejected it for failure to include the control actions and enforcement commitments considered by said board to be necessary to protect Lake Tahoe. Said board further revoked the Tahoe Regional Planning Agency's designation as the 208 planning agency for the California portion of the Lake Tahoe Region, and in October 1980 prepared its own 208 plan for said portion. Said board however, recognized the desirability of a bi-state 208

plan, recommending that the Tahoe Regional Planning Agency adopt certain changes in its 208 plan, and indicating that adoption thereof would result in certification by the State of California of said agency's plan.

1.30 On December 19, 1980 the Tahoe Regional Planning Compact was amended, requiring, among other things, that the Tahoe Regional Planning Agency adopt environmental threshold carrying capacities and, based thereon, a revised regional plan on or before June 19, 1983. The amendments to said compact also provide limitations upon development in the Lake Tahoe Region that might otherwise absorb the capability of the region for further development or direct development out of harmony with the revised regional plan. While the Section 208 planning process commenced prior to and is separate and independent from the amendments to said compact, said process, including the provisions of this ordinance, is in accordance with the letter and spirit of said amendments, particularly with respect to the need, pending adoption of a revised regional plan, to restrict or prohibit development upon environmentally sensitive lands as provided herein.

1.40 As required by law, the Governing Body of the Tahoe Regional Planning Agency, prior to the adoption of this ordinance and the amendments to said agency's Lake Tahoe Basin Water Quality Management Plan implemented hereby, conducted duly noticed public hearings, at which hearings considerable oral testimony and documentary evidence were received and considered by the Governing Body. Evidence in the record of said hearings, which evidence is hereby

determined substantial, showed that serious degradation of the quality of the water of Lake Tahoe is occurring, which degradation, absent at least the land use controls set forth in this ordinance, may irreversibly damage Lake Tahoe and the Lake Tahoe Region.

1.50 This ordinance is necessary and desirable to promote, and is reasonably related to, the public health, safety and general welfare of the Lake Tahoe Region, complies in all respects, procedural and substantive, with the Tahoe Regional Planning Compact and the regional plan, including the water quality management plan as amended to date, ordinances, rules, regulations and policies of the Tahoe Regional Planning Agency, and is necessary to effectuate and implement the same. This ordinance and the amendments to said agency's Lake Tahoe Basin Water Quality Management Plan implemented hereby are in furtherance of a bi-state approach to Section 208 planning in the Lake Tahoe Region, as opposed to such planning upon an otherwise undesirable single-state basis, and are in compliance with the Federal Clean Water Act.

1.60 The amendments to the water quality management plan and the provisions of this ordinance implementing same were the subject of an environmental impact statement, which statement was prepared, circulated, certified and otherwise processed, reviewed and approved by the Tahoe Regional Planning Agency in accordance with the substantive and procedural provisions of Article VII of the Tahoe Regional Planning Compact.

1.70 The case-by-case review process adopted by this ordinance is costly, time-consuming and difficult to enforce. The process is necessary on an interim basis, however, to prevent hardship to owners of property within the Region.

Section 2.00 Amendment Regulating Development on High-Erosion and High-Runoff Hazard Lands.

Section 12.00 of Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended to read as follows:

Section 12.00 Regulation of Development on High-Erosion and High-Runoff Hazard Lands.

12.10 Classification of Areas for Review of Residential Development.

The regulation or prohibition under this ordinance of residential development upon lots or parcels lawfully of record as of December 19, 1980 and within land capability districts 1a, 1c. 2 and 3 shall be pursuant to classification of the development characteristics of the subdivision or area in which the lot or parcel is situated. The Governing Body or executive officer of the Agency shall appoint a planning team consisting of a team leader, ecologist, hydrologist, soil scientist, engineer and architect, which team shall evaluate the development characteristics of the pertinent subdivision or area for classification for purposes of this ordinance as "adequate" "potentially adequate" or "in need of further consideration". In the case of a subdivision, such

evaluation shall be pursuant to consultation with a representative of the subdivision.

12.11 Standards for Classification.

Classification by the planning team of subdivisions and areas for purposes of this ordinance shall be pursuant to the following standards:

(a) "Adequate" – proper placement of roads and drainage structures in relationship to natural features; proper maintenance of all facilities, including, without limitation, those relating to drainage and erosion control; stable cuts and fills; few downstream impacts or adverse environmental effects as a result of land coverage within the subdivision or area; stable internal and downstream drainages and waterways; absence of difficulties in access to the subdivision or area as a result of placement of building sites in relationship to roadways; and land coverage is generally below that permitted by the Agency's Land Use Ordinance.

(b) "Potentially adequate" – proper placement of roads in relationship to natural features; proper placement generally of drainage structures, with the need of some additional drainage structures; proper stabilization generally of cuts and fills, with the need of some additional stabilization thereof; construction of improvements in the subdivision or

area may have caused minor downstream impacts or adverse environmental effects upon drainages and waterways; and land coverage is generally below that permitted by the Agency's Land Use Ordinance.

(c) "In need of further consideration" – poor placement of roads and drainage structures in relationship to natural features; unstable cuts and fills, which are incapable of satisfactory rehabilitation; unstable internal and downstream drainages and waterways; land coverage generally exceeds that permitted by the Agency's Land Use Ordinance; and the lack in individual cases of substantial construction of roads, utilities or drainage structures.

12.12 Application of Standards

(a) The nature and characteristics of the subject regulated by this ordinance dictate that the standards set forth in subsection 12.11 be general. The duty of the planning team in applying said standards to a particular subdivision or area shall be to determine the adequacy, potential adequacy or clear inadequacy of the subdivision or area, including all improvements therein, to minimize the adverse effects of further development therein upon the quality of water in the region.

(b) In determining and classifying the "area" for purposes of residential

development upon a parcel, the planning team pursuant to subsection 12.11 shall evaluate that area of land situated in the vicinity and in the watershed of the parcel, to which area the parcel reasonably relates for purposes of determining the effect on the quality of water in the region of development on the parcel.

(c) The entire subdivision or area, as the case may be, shall be evaluated and classified by the planning team pursuant to subsection 12.11, notwithstanding that a portion thereof is within land capability districts other than 1a, 1c, 2 and 3.

12.13 Appeal of Classification.

Any aggrieved person may appeal the classification by the planning team of a subdivision or area by lodging a written notice of appeal with the Agency. Such appeal shall be heard by the Governing Body, which may affirm, reverse or modify the determination by the planning team. The decision by the Governing Body on any such appeal shall be final.

2.20 Review of Permitted Development.

12.21 Permit Required.

Except as otherwise provided by this ordinance, no person shall perform any construction, work use or activity, including without limitation, grading, clearing, removal of vegetation, filling or creation of land coverage, upon land within land capability districts 1a, 1c, 2 and 3 without first

obtaining a permit from the Agency. The application for such permit shall be reviewed and approved as a "project" pursuant to the Compact and the Rules and Regulations of Practice and Procedure of the Agency. Such application shall not be accepted or reviewed, and no permit pursuant thereto issued, by the Agency unless the application, in complete form, is received by the Agency on or before May 31, 1982 and the construction, work, use or activity proposed is for a single-family house to be constructed on a lot within a subdivision classified pursuant to subsection 12.10 as adequate or potentially adequate, or on a parcel within an area so classified.

12.22 Consideration of Permit Application.

The application for a permit pursuant to subsection 12.21 shall be reviewed with respect to all potential effects upon water quality of the construction of a single-family house on the pertinent lot or parcel. Such review shall include, but need not be limited to, the factors of vegetative cover, proximity of the project to a stream or wet land, runoff potential and land stability, as set forth in the document entitled "1981 TRPA Case by Case Lot Review Criteria", as the same may be amended from time-to-time by resolution of the Governing Body. In addition to findings otherwise required by Article VI(b) of the Compact, such application shall not be approved unless it is found by the Agency that the construction work, use or activity proposed thereby will

not adversely affect the quality of water within the region, and that it is in accordance with the Handbook of Best Management Practices, the Plan and all other applicable plans, ordinances, rules, regulations and policies of the Agency. The applicant shall prove that the project will mitigate, below levels of significance, the cumulative adverse effect upon water quality of development of land within land capability districts 1 through 3 for purposes of issuance of a permit under section 12.00 and the making of a finding of no adverse effect on quality of water in the region under this subsection. The following additional findings shall be made with respect to any project proposing land coverage in excess of that permitted by the pertinent land capability district:

(a) The project may individually and cumulatively contribute to continued erosion and nutrient increase causing degradation of Lake Tahoe; and

(b) Mitigation measures have been incorporated into the project, including application of construction or contribution toward construction of offsite remedial erosion control measures which will offset any anticipated adverse effects. These measures constitute changes or alterations required in or incorporated into such project which avoid or

reduce the significant adverse environmental effects to a less than significant level pursuant to Article VII of the Compact.

12.23 Permitted Land Coverage.

No permit issued pursuant to subsection 12.21 shall authorize, and no person shall create, or perform any construction, work, use or activity for the purpose of creation of, land coverage in excess of that permitted pursuant to section 9.24 of the Agency's Land Use Ordinance (Ordinance No. 4) or twenty percent (20%) of the area of the pertinent lot or parcel, whichever is less. For this purpose, "lot" within the meaning of said section 9.24 shall include "parcel" as used in this ordinance, and land coverage shall be calculated in accordance with sections 8.22, 8.23 and 8.24 of said Land Use Ordinance.

12.30 Residential Remodeling, Additions and Reconstruction.

12.31 Application Procedure.

Applications for remodeling and reconstruction of, and additions to, single-family houses existing on May 27, 1981 on land within land capability districts 1a, 1c, 2 and 3, which involve grading, clearing, removal of vegetation or filling and result in remaining land coverage in excess of that permitted by the pertinent land capability district, shall be processed pursuant to section 9.21 of the Agency's Land Use Ordinance, to the extent such section is applicable. If section 9.21 is not applicable, or cannot be feasibly

applied to the application, and the nonconforming land coverage pertaining to such application cannot be eliminated by the consolidation of the subject lot or parcel with another lot or parcel, such application shall be processed, reviewed and approved pursuant to subsections 12.10 and 12.20.

12.32 Mitigation.

Approval by the Agency of a permit for remodeling or reconstruction of, or an addition to, a single-family house shall be conditioned upon mitigation to offset any increased erosion as a result of the creation of new land coverage, which mitigation shall be based upon the squarefootage of new land coverage in accordance with subsection 12.50.

12.33 Best Management Practices.

Approval by the Agency of a permit for the remodeling or reconstruction of, or an addition to, a single family house shall be conditioned upon application of best management practices to the entire lot or parcel upon which such house is situated.

12.40 Prohibition of Commercial Land Coverage In Excess of Land Capability System.

12.41 Prohibition.

Except as otherwise provided in this subsection, the Agency shall accept and review applications, and issue permits, for new commercial construction, uses and activities within the region pursuant to the Compact and otherwise applicable ordinances by the Agency. No such application shall be

accepted or reviewed, and no permit thereunder issued, by the Agency unless the construction, use or activity proposes land coverage in accordance with that permitted by the pertinent land capability district. For purposes of this subsection, the term "new commercial construction, uses and activities" includes commercial remodeling, additions and reconstruction involving creation of new land coverage.

12.42 Exceptions to Prohibition.

Land coverage in excess of that permitted by the pertinent land capability district, and otherwise authorized by the Agency's Land Use Ordinance, may be approved by the Agency for commercial construction, uses or activities occurring within land capability districts 4, 5, 6 and 7, provided such approval is pursuant to:

(a) Replacement of nonconforming land coverage pursuant to section 9.21 of said Land Use Ordinance;

(b) The consolidation of the lot or parcel upon which the construction, use or activity is to occur with another lot or parcel, upon which there is to be created no additional land coverage, such consolidation resulting in land coverage in accordance with the pertinent land capability district; or

(c) The transfer, by an appropriate recorded document prescribed by the Agency, of permitted land coverage from a lot or parcel within the same watershed as the lot or parcel upon

which the construction, use or activity is to occur, such transfer resulting in land coverage in accordance with the land capability district or districts applicable to the transferor and transferee lots or parcels as a whole.

12.43 Application of Provisions.

"Commercial" for purposes of this section refers to construction, uses or activities lawfully permitted within the General Commercial and Tourist Commercial Districts as set forth in the Regional Plan as well as any other commercial use permitted within any other district set forth therein. Calculation of land coverage pursuant to this section shall be in accordance with sections 8.22, 8.23 and 8.24 of the Agency's Land Use Ordinance.

12.50 Mitigation Measures.

12.51 Required Measures.

The approval of issuance by the Agency of any permit or other authorization for any construction, use or activity, whether pursuant to this ordinance or any other ordinance of the Agency, shall be expressly conditioned upon the construction implementation or use, as the case may be, of remedial erosion control measures determined by the Agency as adequate to offset or compensate for any increased erosion caused by such construction, use or activity. Such measures shall be in addition to any best management practices otherwise required as a condition upon such approval or issuance.

12.52 Mitigation Fee.

The applicant shall pay to the Agency a mitigation fee based upon an assessment of an average of one hundred fifty percent (150%) of the amount of mitigation necessary to offset or compensate for any such increased erosion. In lieu of this fee, the applicant may provide services of an equivalent value. Such fee shall be set pursuant to resolution of the Governing Body, as amended from time-to-time, which resolution shall relate the amount of the fee to the nature and extent of the mitigation required. The Agency shall deposit proceeds of the mitigation fee into trust funds, to be individually known as the Water Quality Mitigation Fund, which funds shall be administered and distributed by the city or counties, with approval of the Agency, for expenditure upon the most cost-effective remedial control measures within the jurisdiction of origin set forth in the Plan. The mitigation fee established by the Agency shall be based upon the following factors:

(a) The estimated increased erosion taking place during and after development of the site, assuming application of best management practices, which estimate shall relate to the number of square feet of land coverage to be created and the pertinent land capability district;

(b) The incremental cost of correction of existing erosion, based on reduction of an average of one hundred fifty percent (150%) of the

amount of erosion actually to be reduced; and

(c) The least cost-effective remedial control strategies set forth in the Plan.

12.60 Prohibition of Other Uses.

Except as otherwise provided by this ordinance, and subject to the exceptions set forth in this subsection, no person shall perform any grading, clearing, removal of vegetation, filling or creation of land coverage upon land within land capability districts 1a, 1c, 2 and 3. Said prohibition and the provisions of subsections 12.10, 12.20, 12.30 and 12.40 do not apply to:

12.61 Approved Subdivisions.

Land within subdivisions approved by the Agency after February 10, 1972 in accordance with the Agency's land capability district regulations, without reliance upon or reference to sections 7.83, 8.25(2), 8.28, 8.34 or 9.23 of the Agency's Land Use Ordinance, as amended or renumbered from time-to-time, and it is determined in writing by the Agency that erosion controls, drainage devices and other facilities for the protection of water quality, required by the Agency at the time of approval, have been properly installed and maintained.

12.62 Public Works.

Construction of a public work by a public entity, provided the Agency finds that such work is necessary for implementation of the Nonattainment Air Quality Plan or the transportation element of the Regional Plan,

or is necessary for public recreation or the protection of the public health, safety or general welfare, and all other feasible alternatives not involving construction within said district have been exhausted.

12.63 Man-Modified Areas.

Land within such districts, which the Agency finds has been so substantially modified as to alter the land capability, soil characteristics, hydrology, geomorphic characteristics and vegetation prior to February 10, 1972, as determined pursuant to Section 8.29 of the Land Use Ordinance.

12.64 Approved Erosion Control Work.

Erosion control work approved by the Agency.

12.65 Outdoor Recreation Facilities.

Construction of outdoor recreation facilities open to the public.

12.70 Administrative Challenge to Land Capability District Classification.

Any interested person may challenge the land capability district classification of land pursuant to section 8.25(1) of the Agency's Land Use Ordinance, whereupon an appropriate classification may be determined as provided in such section.

Section 3.00 Amendment Prohibiting Development In Stream Environment Zone.

Section 13.00 of Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended to read as follows:

13.10 Prohibition.

Notwithstanding any other provision of this ordinance or of any other ordinance of the Agency, no person shall perform any grading, clearing, removal of vegetation, filling or creation of land coverage, within or upon a stream environment zone ("SEZ"), as described or depicted upon maps contained in the Plan.

13.20 Development on Lots or Parcels Containing Stream Environment Zones.

Notwithstanding any other provision of this ordinance or of any other ordinance of the Agency, no person shall perform any construction, work, use or activity upon a lot or parcel containing an SEZ without first obtaining a permit from the Agency, the application for which permit shall be reviewed and approved as a "project" pursuant to the Compact and the Rules and Regulations of Practice and Procedure of the Agency. Such application shall not be approved unless it is found by the Agency that it proposes no grading, clearing, removal of vegetation, filling or creation of land coverage within the SEZ, and that it is in accordance with the Handbook of Best Management Practices, the Plan and all other applicable plans, ordinances, rules, regulations and policies of the Agency.

13.30 Exception For Certain Public Projects and Man-Modified Areas.

The prohibition upon construction, work, use or activity within or upon an SEZ does not apply to:

13.31 Public Works.

Construction of a public work by a public entity, provided the Agency finds that such work is necessary for implementation of the Nonattainment Air Quality Plan or the transportation element of the Regional Plan, or is necessary for public recreation or the protection of the public health, safety or general welfare, and all other feasible alternatives not involving construction within the SEZ have been exhausted.

13.32 Man-Modified Areas.

SEZ lands, which the Agency finds have been so substantially modified as to alter the land capability, soil characteristics, hydrology, geomorphic characteristics and vegetation prior to February 10, 1972, as determined pursuant to section 8.29 of the Land Use Ordinance.

13.33 Approved Erosion Control Work.

Erosion control work approved by the Agency.

13.40 Administrative Challenge to Stream Environment Zone Boundary.

Any interested person may challenge the accuracy of the boundary of an SEZ pursuant to subsection 10.30, whereupon an appropriate boundary may be fixed as provided in such section.

Section 4.00 Amendment Prohibiting Land Coverage In Excess of Land Capability System for Districts 4 through 7.

Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by adding new Section 14.00, to read as follows:

Section 14.00 Prohibition of Land Coverage In Excess of Land Capability System for Districts 4 through 7.

14.10 Prohibition.

Notwithstanding any other provision of this ordinance or of any other ordinance of the Agency, including without limitation, the provisions of the Agency's Land Use Ordinance authorizing land coverage in excess of that permitted by the pertinent land capability district, no person shall create, or perform any construction, work, use or activity for the purpose of creation of, land coverage in excess of that permitted by land capability districts 4, 5, 6 and 7. Land coverage shall be calculated in accordance with sections 8.22, 8.23 and 8.24 of the Agency's Land Use Ordinance, provided that land coverage shall be calculated only with reference to the land owned or controlled by the applicant, thus excluding improvements not

located upon such land, such as public street and other off-site public facilities. The prohibition of this section applies to construction, work, use or other activities not otherwise prohibited by this ordinance or any other ordinance of the Agency.

14.20 Exceptions to Prohibition.

The prohibition of this section does not apply to:

14.21 Replacement.

Replacement of existing nonconforming land coverage pursuant to the Agency's Land Use Ordinance.

14.22 Approved Subdivisions.

The creation of land coverage upon a lot located within a subdivision approved by the Agency after February 10, 1972 in accordance with the Agency's land capability district regulations, without reliance upon or reference to sections 7.83, 8.25(2), 8.28, 8.34 or 9.23 of the Agency's Land Use Ordinance, as amended or renumbered from time-to-time, and it is determined in writing by the Agency that erosion controls, drainage devices and other facilities for the protection of water quality, required by the Agency at the time of approval, have been properly installed and maintained.

14.23 Net Reduction of Coverage.

Creation of land coverage upon a lot or parcel within a subdivision or planned

unit development, the otherwise permitted nonconforming land coverage for which is reduced to that authorized by the land capability district within which the subdivision or development is located, or, if there is more than one such district such coverage is reduced to that complying with the total coverage authorized by such districts.

14.24 Public Works.

Creation of land coverage for a public work by a public entity, provided the Agency finds that such work is necessary for implementation of the Nonattainment Air Quality Plan or the transportation element of the Regional Plan, or is necessary for public recreation or the protection of the public health, safety or general welfare, and all other feasible alternatives not involving creation of land coverage in excess of that permitted by the pertinent land capability district have been exhausted.

14.25 Approved Erosion Control Work.

Erosion control work approved by the Agency.

14.30 Administrative Challenge to Land Capability District Classification.

Any interested person may challenge the land capability district classification of land pursuant to section 8.25(1) of the Agency's Land Use Ordinance,

whereupon an appropriate classification may be determined as provided in such section.

Section 5.00 Amendment Providing Remedial Erosion Control and Drainage Projects.

Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by adding new section 15.00, to read as follows:

Section 15.00 Remedial Erosion Control and Drainage Projects.

The Agency shall oversee and, to the extent legally permissible cause to be implemented, a 20-year phased implementation schedule for remedial erosion control and drainage projects contained in the Plan in accordance with the provisions of "Alternative Action 3 – Regulatory Program Tied to Full 20-Year Implementation Program", as set forth in section IIIF.3. in the Plan. The Agency shall adopt a mandatory regulatory program, pursuant to ordinance of the Agency.

Section 6.00 Amendment Prohibiting Subdivisions.

Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by adding new section 16.00, to read as follows:

Section 16.00 Prohibition of Subdivisions.

16.10 Prohibition.

No subdivision shall be approved, and no person shall perform any construction, work, use or activity in connection with off-

site improvements for a subdivision, including without limitation, roads and utilities. This section shall not apply to construction of off-site improvements for a subdivision approved by the Agency, which construction is not otherwise limited or prohibited by this ordinance. The meaning of "subdivision" for purposes of this section is the same as the meaning of that term for purposes of Article VI(c)(1) of the Compact.

16.20 Exceptions to Prohibition.

The prohibition of this section does not apply to the subdivision of land owned by a general improvement district which existed and owned the land before December 19, 1980, provided such subdivision is necessary to avoid insolvency of the district, and it is demonstrated by the applicant that water quality objectives will be attained through appropriate mitigation measures or pollution offsets.

Section 7.00 Amendment Providing Best Management Practices On Forest Lands.

Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by adding new section 17.00, to read as follows:

Section 17.00 Best Management Practices On Forest Lands.

The Handbook of Best Management Practices shall be implemented for correction of water quality problems on forest lands without issuance by the Agency of a development or use permit. In addition to otherwise applicable

requirements of Handbook of Best Management Practices (Volume II), the following practices shall be used for the following uses or activities:

17.10

Best Management Practice XII A (Volume II) shall be used as a guideline for livestock confinement activities.

17.20

Best Management Practice XII B (Volume II) shall be used as a guideline for ski area use and development.

17.30

Best Management Practice XII C (Volume II) shall be used as a guideline for operation of golf courses, including but not limited to the limitations upon application of fertilizer and prohibition of fast-release fertilizer.

17.40

Best Management Practice XII D (Volume II) shall be used as a guideline for logging operations. Except as otherwise provided in this section, clear-cut logging operations are prohibited timber harvesting activities. Such prohibition of clear-cut logging operations shall not apply to clear-cuts up to five (5) acres in size for purposes of appropriate forest management practices, consisting of management of timber resources, wildlife habitats, insect and disease control and the long-range visual quality of the Region. Selective harvest techniques shall be utilized in logging operations, except for removal of diseased trees or trees infected

by insects, which removal is necessary to maintain the health and diversity of the timber stand.

17.50

Best Management Practice XII E (Volume II) shall be used as a guideline for off-road vehicular use. The Agency shall designate areas closed and restricted to off-road vehicular use in coordination with the U.S. Forest Service.

17.60

Revegetation, resurfacing or other measures to control erosion from dirt roads on forest lands shall be consistent with the recommendations of the Handbook of Best Management Practices.

Section 8.00 Amendment Specifying Relationship to Compact and Other Agency Ordinances.

Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by adding new Section 18.00, to read as follows:

Section 18.00 Relationship to Compact and Other Agency Ordinances.

18.10 Compact.

The provisions of this ordinance are subject to the Compact, including without limitation, the provisions of Article VI(c) thereof relating to the allocation of building permits for residential units and commercial square-footage.

18.20 Other Ordinances.

In the event a provision of this ordinance conflicts with a provision of any previously adopted ordinance of the Agency, the provision of this ordinance, to the extent of such conflict, prevails. A residential or commercial construction use or activity, otherwise permitted by this ordinance, shall also comply with the Regional Plan and all other applicable Agency ordinances.

Section 9.00 Amendment Providing Penalties for Violation.

Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by adding new Section 19,.00, to read as follows:

Section 19.00 Penalties for Violation.

Any person who violates any provision of this ordinance or of any condition of approval imposed by the Agency is subject to civil penalties in accordance with Article VI(1) of the Compact.

Section 10.00 Amendment Specifying Applicability of Regulations.

Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by adding new Section 20.00, to read as follows:

Section 20.00 Applicability of Provisions of Ordinance.

20.10 Nevada.

The provisions of section 12.00 of this ordinance, excluding subsections 12.50, 12.51, and 12.52, inclusive, apply to the portion of the Region located within the State of Nevada. All other provisions of this ordinance, including without limitation said subsections 12.50, 12.51 and 12.52, but excluding subsection 20.20, apply to the entire region.

20.20 California.

With respect to the portion of the Region lying within the State of California, the Agency, subject to the provisions of section 21.00 shall enforce, as its plan, the following provisions of the Lake Tahoe Basin Water Quality Plan, California State Water Resources Control Board, 1981:

20.21 Water Quality Problems and Control Needs, Chapter III (pp. 64-136).

20.22 Implementation, Chapter IV (pp. 137-189).

20.23 Alternative C, Chapter V(A)(3) (pp. 191-192).

20.24 Municipal Wastewater Treatment, Chapter V(C) (pp. 196-213).

20.25 Solid Waste, Chapter V(E)(f) (pp. 238-240).

This provision shall apply so long as the foregoing provisions of said plan of the California State Water Resources Control Board lawfully remain enforceable.

20.30 Exemptions.

Sections 12.00, 13.00 and 14.00 of this ordinance do not apply to the construction of a new single-family house or the reconstruction or remodeling of, or the construction of an addition to, a single-family house lawfully in existence on December 19, 1980, if the following conditions are met:

20.31 The single-family house is within, or is to be built within, the portion of the Region located within the State of California, and the applicant for permits pertaining thereto received either of the following:

(a) An approval or "release" for final construction drawings by the California Tahoe Regional Planning Agency, receipt of which occurred prior to December 19, 1980; or

(b) A 1980 sewer allocation, receipt of which occurred prior to October 29, 1980.

20.32 The single-family house is within, or is to be built within, the portion of the Region located within the State of Nevada, and the applicant for permits pertaining thereto received both of the following:

(a) Sewer and water permits, receipt of which occurred prior to December 19, 1980; and

(b) An allocation for a building permit within the limitations imposed

for calendar year 1980 pursuant to Article VI(c) of the Compact.

Section 11.00 Amendment Providing Expiration of Provisions.

Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by adding new Section 21, to read as follows:

Section 21.00 Expiration of Provisions.

The provisions of section 12.00, excluding subsections 12.40, 12.41, 12.42, 12.43, 12.50, 12.51, 12.52, 12.60, 12.61, 12.62, 12.63, 12.64, 12.65 and 12.70 of this ordinance shall expire on November 30, 1982, unless otherwise extended. The provisions of subsections 12.40, 12.41, 12.42, 12.43, 12.60, 12.61, 12.62, 12.63, 12.64, 12.65, 12.70, sections 13.00, 14.00, 16.00 and subsections 20.20, 20.21, 20.22, 20.23, 20.24, and 20.25 of this ordinance shall expire upon the adoption by the Agency of amendments to the Regional Plan pursuant to Article V(c) of the Compact.

Section 12.00 Amendment of Existing Definitions.

Section 3.00 of Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by causing the following definitions therein to read in the following manner, with the other definitions set forth in said section 3.00, not modified by this ordinance, to remain as presently set forth in said section:

Plan – The Lake Tahoe Basin Water Quality Management Plan as described in Ordinance No. 79-3, as amended by Ordinance No. 81-4.

Region – All that area described in Article II(a) of the Tahoe Regional Planning Compact, as amended.

Section 13.00 Amendment Adding Definitions.

Section 3.00 of Ordinance No. 79-10 of the Tahoe Regional Planning Agency is hereby amended by adding the following definitions thereto:

Compact – The Tahoe Regional Planning Compact, as amended.

Land Capability District – One of the seven (7) land capability districts as depicted or described in the Regional Plan of the Tahoe Regional Planning Agency and the Land Capability Map, with accompanying text, contained in said Regional Plan.

Section – Unless otherwise specified, a section set forth in this ordinance, including all subsections; e.g. section 12.00 includes all subsections therein such as 12.10, 12.11, 12.20, 12.21 et seq.

The definitions of the following terms contained in section 3.00 of the Land Use Ordinance of the Tahoe Regional Planning Agency are incorporated herein by this reference as though fully set forth: Governing Body; Land Coverage; Lot; Outdoor Recreation; Parcel; Person; Regional Plan; Single-family dwelling unit; and Single-family house.

The definitions of the following terms contained in section 3.00 of the Grading Ordinance of the Tahoe Regional Planning Agency are incorporated herein by this reference as though fully set forth: Clearing of Vegetation; and Fill.

Section 14.00 Amendments to Sections 4.10, 6.10, 10.20 and 10.40.

Sections 4.10, 6.10, 10.20 and 10.40 of Ordinance No. 79-10 of the Tahoe Regional Planning Agency are hereby amended to read as follows, respectively:

4.10 Adoption of Plan.

By Ordinance No. 79-3, as amended by Ordinance No. 81-4, the Agency adopted the Plan as a portion of the land use element of the Regional Plan. This ordinance implements the Plan.

6.10 Findings.

The Governing Body, in accordance with the provisions and purposes of Article V and Article VI of the Compact, and in accordance with the Federal Clean Water Act and non-degradation policy hereby finds it necessary to adopt water quality standards and objectives for the Region, as well as the limitations and prohibitions upon development set forth in this ordinance.

10.20 Development on SEZ.

Except as otherwise prohibited or limited by this ordinance, development on SEZ land shall comply with the appropriate provisions of the Handbook of Best Management Practices.

10.40 Development on Other Land.

Except as otherwise prohibited or limited by this ordinance, development on lands within the Region shall comply with the appropriate provisions of the Handbook of Best Management Practices.

Section 15.00 Interpretation and Severability.

The provisions of this ordinance shall be liberally construed to effect their purposes. If any section, clause, provision or portion of this ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby. For this purpose, the provisions of this ordinance are hereby declared severable.

Section 16.00 Effective Date.

This ordinance shall be effective sixty (60) days after the date of its adoption.

FIRST READING: May 28, 1981

SECOND READING: June 25, 1981

PASSED AND ADOPTED by the Governing Body of the Tahoe Regional Planning Agency at a regular meeting held June 25, 1981, by the following vote:

Ayes: Mr. Stewart, Mr. Steele, Mr. Swackhamer, Mr. Sevison, Ms. Stoess, Mr. Reed, Mr. Phillips, Mr. Westergard

Nayes: Mr. Kjer, Mr. Woods

Abstensions: None

Absent: Mr. Ferrari, Mr. Mangers, Mr. Jacobsen, Mr. Hall

/s/ Roland D. Westergard
Roland D. Westergard, Chairman

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

June 29, 2001

Mr. Michael M. Berger
Berger & Norton
1620 26th Street, Suite 200 S.
Santa Monica, CA 90404-4040.

Re: Tahoe-Sierra Preservation Council, Inc., et al.
v. Tahoe Regional Planning Agency, et al.
No. 00-1167

Dear Mr. Berger:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is granted limited to the following question: "Whether the Court of Appeals properly determined that a temporary moratorium on land development does not constitute a taking of property requiring compensation under the Takings Clause of the United States Constitution?"

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk